UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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IN RE: AUTOMOTIVE WIRE HARNESS SYSTEMS ANTITRUST Case No. 12-md-02311

MDL NO. 2311

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STATUS CONFERENCE, MOTION HEARINGS, FINAL APPROVAL HEARING

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, November 16, 2016

APPEARANCES:

Direct Purchaser Plaintiffs:

DAVID H. FINK
FINK & ASSOCIATES LAW
100 West Long Lake Road, Suite 111
Bloomfield Hills, MI 48304
(248) 971-2500

NATHAN FINK
FINK & ASSOCIATES LAW
100 West Long Lake Road, Suite 111
Bloomfield Hills, MI 48304
(248) 971-2500

GREGORY P. HANSEL
PRETI, FLAHERTY, BELIVEAU & PACHIOS, L.L.P.
One City Center
Portland, ME 04112
(207) 791-3000

APPEARANCES: (Continued)

Direct Purchaser Plaintiffs:

STEVEN A. KANNER
FREED, KANNER, LONDON & MILLEN, L.L.C.
2201 Waukegan Road, Suite 130
Bannockburn, IL 60015
(224) 632-4502

EUGENE A. SPECTOR
SPECTOR, ROSEMAN, KODROFF & WILLIS, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 496-0300

RANDALL B. WEILL
PRETI, FLAHERTY, BELIVEAU & PACHIOS, L.L.P.
One City Center
Portland, ME 04112
(207) 791-3000

End-Payor Plaintiffs:

DEVON ALLARD
THE MILLER LAW FIRM, P.C.
950 West University Drive, Suite 300
Rochester, MI 48307
(248) 841-2200

JOYCE CHANG
COTCHETT, PITRE & McCARTHY, L.L.P.
840 Malcolm Road
Burlingame, CA 94010
(650) 697-6000

ROD M. JOHNSTON
SOMMERS SCHWARTZ
1 Towne Square, Suite 1700
Southfield, MI 48076
(248) 236-5752

APPEARANCES: (Continued)

End-Payor Plaintiffs:

OMAR OCHOA
SUSMAN GODFREY, L.L.P.
901 Main Street, Suite 5100
Dallas, TX 75202
(214) 754-1913

WILLIAM V. REISS
ROBINS, KAPLAN, MILLER & CIRESI, L.L.P.
601 Lexington Avenue, Suite 3400
New York, NY 10022
(212) 980-7405

HOLLIS L. SALZMAN
ROBINS, KAPLAN, MILLER & CIRESI, L.L.P.
601 Lexington Avenue, Suite 3400
New York, NY 10022
(212) 980-7405

ELIZABETH T. TRAN
COTCHETT, PITRE & McCARTHY, L.L.P.
840 Malcolm Road
Burlingame, CA 94010
(650) 697-6000

Dealership Plaintiffs:

DON BARRETT
BARRETT LAW OFFICES
P.O. Drawer 927
Lexington, MS 39095
(601) 834-2376

ALEXANDER E. BLUM
MANTESE, HONIGMAN, ROSSMAN & WILLIAMSON, P.C.
1361 East Big Beaver Road
Troy, MI 48083
(248) 457-9200

APPEARANCES: (Continued)

Dealership Plaintiffs:

JONATHAN W. CUNEO
CUNEO, GILBERT & LaDUCA, L.L.P.
507 C Street NE
Washington, D.C. 20002
(202) 789-3960

KATHRYN EISENSTEIN
MANTESE, HONIGMAN, ROSSMAN & WILLIAMSON, P.C.
1361 East Big Beaver Road
Troy, MI 48083
(248) 457-9200

JOHN KAKINUKI
KAKINUKI LAW OFFICE, P.C.
2 Civic Center Drive, #4222
San Rafael, CA 94913
(415) 492-2011

KENTON KNOP
KAKINUKI LAW OFFICE, P.C.
2 Civic Center Drive, #4222
San Rafael, CA 94913
(415) 492-2011

EVELYN LI
CUNEO, GILBERT & LaDUCA, L.L.P.
507 C Street NE
Washington, D.C. 20002
(202) 789-3960

SEAN P. McCONNELL
DUANE MORRIS, L.L.P.
30 South 17th Street
Philadelphia, PA 19103
(215) 979-1342

J. MANLY PARKS
DUANE MORRIS, L.L.P.
30 South 17th Street
Philadelphia, PA 19103
(215) 979-1342

APPEARANCES: (Continued)

Dealership Plaintiffs:

SHAWN M. RAITER
LARSON KING, L.L.P.
30 East Seventh Street, Suite 2800
Saint Paul, MN 55101
(651) 312-6500

VICTORIA ROMANENKO
CUNEO, GILBERT & LaDUCA, L.L.P.
507 C Street NE
Washington, D.C. 20002
(202) 789-3960

WILLIAM SHOTZBARGER
DUANE MORRIS, L.L.P.
30 South 17th Street
Philadelphia, PA 19103
(215) 979-7385

ANDREW R. SPERL
DUANE MORRIS, L.L.P.
30 South 17th Street
Philadelphia, PA 19103
(215) 979-7385

APPEARANCES: (Continued)

For the Defendants:

DAN V. ARTAEV
THE MIKE COX LAW FIRM, P.L.L.C.
17430 Laurel Park Drive North, Suite 120E
Livonia, MI 48152
(734) 591-4002

ALDEN L. ATKINS
VINSON & ELKINS, L.L.P.
2200 Pennsylvania Avenue NW, Suite 500 West
Washington, D.C. 20037
(202) 639-6613

DONALD M. BARNES
PORTER, WRIGHT, MORRIS & ARTHUR, L.L.P.
1919 Pennsylvania Avenue, NW, Suite 500
Washington, D.C. 20006
(202) 778-.3056

EMILY BLACKBURN
ARNOLD & PORTER, L.L.P.
555 Twelfth Street NW
Washington, D.C. 20004
(202) 942-5000

MATT BOUCHER
ALLEN & OVERY, L.L.P.
1221 Avenue of the Americas
New York, NY 10020
(212) 610-6360

MICHAEL G. BRADY
WARNER, NORCROSS & JUDD, L.L.P.
2000 Town Center, Suite 2700
Southfield, MI 48075
(248) 784-5032

APPEARANCES: (Continued)

For the Defendants:

JEREMY CALSYN
CLEARY, GOTTLIEB, STEEN & HAMILTON, L.L.P.
2000 Pennsylvania Avenue NW
Washington, D.C. 20006
(202) 974-1500

PATRICK J. CAROME
WILMER HALE
1875 Pennsylvania Avenue NW
Washington, D.C. 20006
(202) 663-6610

STEVEN F. CHERRY
WILMER HALE
1875 Pennsylvania Avenue NW
Washington, D.C. 20006
(202) 663-6321

MICHAEL R. DEZSI
DETTMER & DEZSI, P.L.L.C.
615 Griswold Street, Suite 1600
Detroit, Michigan 48226
(313) 879-1206

BRANDON W. DUKE
WINSTON & STRAWN, L.L.P.
1111 Louisiana Street, 25th Floor
Houston, TX 77002
(713) 651-2600

ABRAM ELLIS
SIMPSON, THACHER & BARTLETT, L.L.P.
1155 F Street, N.W.
Washington, D.C. 20004
(202) 636-5579

APPEARANCES: (Continued)

For the Defendants:

J. CLAYTON EVERETT, JR.
MORGAN, LEWIS & BOCKIUS, L.L.P.
1111 Pennsylvania Avenue NW
Washington, D.C. 20004
(202) 739-5860

PETER M. FALKENSTEIN
JAFFE, RAITT, HEUER & WEISS, P.C.
535 W. William, Suite 4005
Ann arbor, MI 48103
(734) 222-4776

KEVIN FEE
SIDLEY AUSTIN, L.L.P.
One South Dearborn Street
Chicago, IL 60603
(312) 853-4155

MICHAEL FELDBERG
ALLEN & OVERY, L.L.P.
1221 Avenue of the Americas
New York, NY 10020
(212) 610-6360

DANIEL T. FENSKE
JENNER & BLOCK
353 N. Clark Street
Chicago, IL 60654-3456
(312) 222-9350

MARK. A. FORD
WILMER HALE
60 State Street
Boston, MA 02109
(617) 526-6423

APPEARANCES: (Continued)

For the Defendants:

ANITA G. FOX
FRASER TREBILCOCK
124 W. Allegan Street, Suite 1000
Lansing, MI 48933
(517) 482-5800

NICHOLAS GAGLIO
AXINN, VELTROP & HARKRIDER L.L.P.
114 West 47th Street
New York, NY 10036
(212) 728.2200

LARRY S. GANGNES
LANE POWELL, P.C.
1420 Fifth Avenue, Suite 4100
Seattle, Washington 98101
(206) 223-7000

DAVID C. GIARDINA
SIDLEY AUSTIN, L.L.P.
One South Dearborn Street
Chicago, IL 60603
(312) 853-4155

ADAM C. HEMLOCK
WEIL, GOTSHAL & MANGES, L.L.P.
767 Fifth Avenue
New York, NY 10153
(212) 310-8281

FRED K. HERRMANN
KERR, RUSSELL & WEBER, P.L.C.
500 Woodward Avenue, Suite 2500
Detroit, MI 48226
(313) 961-0200

HOWARD B. IWREY
DYKEMA GOSSETT, P.L.L.C.
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304
(248) 203-0526

APPEARANCES: (Continued)

For the Defendants:

CORTLIN LANNINI
COVINGTON & BURLING, L.L.P.
One Front Street
San Francisco, CA 94111
(415) 591-7050

FRANK LISS
ARNOLD & PORTER, L.L.P.
555 Twelfth Street NW
Washington, D.C. 20004
(202) 942-5969

BRADLEY R. LOVE
BARNES & THORNBURG, L.L.P.
11 South Meridian Street
Indianapolis, IN 46204
(317) 261-7896

TIMOTHY J. LOWE
McDONALD HOPKINS, P.L.C.
39533 Woodward Avenue, Suite 318
Bloomfield Hills, MI 48304
(248) 220-1359

SHELDON H. KLEIN
BUTZEL LONG, P.C.
41000 Woodward Avenue
Bloomfield Hills, MI 48304
(248) 258-1414

MICHELLE A. MANTINE
REED SMITH, L.L.P.
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222
(412) 288-4268

ALLYSON M. MALTAS
LATHAM & WATKINS, L.L.P.
555 Eleventh Street NW, Suite 1000
Washington, D.C. 20004
(202) 637-2200

APPEARANCES: (Continued)

For the Defendants:

RONALD M. McMILLAN
CALFEE, HALTER & GRISWOLD, L.L.P.
1405 East Sixth Street
Cleveland, OH 44114
(216) 622-8621

STEFAN M. MEISNER
MCDERMOTT WILL & EMERY
500 North Capitol Street, NW
Washington, D.C. 20001
(202) 756-8000

BRIAN M. MOORE
DYKEMA GOSSETT, P.L.L.C.
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304
(248) 203-0772

GEORGE A. NICOUD, III
GIBSON, DUNN & CRUTCHER, L.L.P.
555 Mission Street
San Francisco, CA 94105
(415) 393-8200

RONALD NIXON
KEMP KLEIN LAW FIRM
201 West Big Beaver Road, Suite 600
Troy, MI 48084
(248) 528-1111

STEVEN REISS
WEIL, GOTSHAL & MANGAS L.L.P.
767 Fifth Avenue
New York, NY 10153
(212) 310-8174

J. DAVID ROWE
DUBOIS, BRYANT & CAMPBELL
303 Colorado, Suite 2300
Austin, TX 78701
(512) 457-8000

APPEARANCES: (Continued)

For the Defendants:

KAJETAN ROZGA
WEIL, GOTSHAL & MANGES L.L.P.
767 Fifth Ave, STE. 3360
New York, NY 10153
(212) 310-8518

MICHAEL RUBIN
ARNOLD & PORTER, L.L.P.
555 Twelfth Street NW
Washington, D.C. 20004
(202) 942-5094

LARRY J. SAYLOR
MILLER, CANFIELD, PADDOCK & STONE, P.L.C.
150 West Jefferson Avenue, Suite 2500
Detroit, MI 48226
(313) 496-7986

SCOTT T. SEABOLT
SEABOLT LAW FIRM
17199 N. Laurel Park Drive, Suite 215
Livonia, MI 48152
(248) 717-1302

MICHAEL LEONARD SIBARIUM
PILLSBURY ,WINTHROP, SHAW, PITTMAN, L.L.P.
1200 Seventeenth Street, NW
Washington, D.C. 20036-3006
(202) 663-9202

PETER L. SIMMONS
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, L.L.P.
One New York Plaza
New York, NY 10004
(212) 859-8455

CHARLES SKLARSKY
JENNER & BLOCK
353 N. Clark Street
Chicago, IL 60654-3456
(312) 923-2904

APPEARANCES: (Continued)

For the Defendants:

ANGELA A. SMEDLEY
WINSTON & STRAWN, L.L.P.
200 Park Avenue
New York, NY 10166
(212) 294-4743

STEPHEN J. SQUERI
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
(216) 586-3939

JOANNE GEHA SWANSON
KERR, RUSSELL & WEBER, P.L.C.
500 Woodward Avenue, Suite 2500
Detroit, MI 48226
(313) 961-0200

LARA TRAGER
WEIL, GOTSHAL & MANGES, L.L.P.
767 Fifth Avenue
New York, NY 10153
(212) 310-8281

MICHAEL F. TUBACH
O'MELVENY & MYERS, L.L.P.
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
(415) 984-8700

LINDSEY ROBINSON VAALA
VINSON & ELKINS, L.L.P.
2200 Pennsylvania Avenue NW, Suite 500 West
Washington, D.C. 20037
(202) 639-6585

A. PAUL VICTOR
WINSTON & STRAWN, L.L.P.
200 Park Avenue
New York, NY 10166
(212) 294-4655

APPEARANCES: (Continued)

For the Defendants:

WILLIAM J. VIGEN
WILLIAMS & CONNOLLY, L.L.P.
725 Twelfth Street, N.W.
Washington, D.C. 20005
(202) 434-5868

OTHER APPEARANCES:

ANN M. BYRD
GREENBERG TRAURIG, L.L.P
3333 Piedmont Road NE, 25th Floor
Atlanta, GA 30305
(678) 553-2100

TIMOTHY FRASER
OFFICE OF THE ATTORNEY GENERAL, STATE OF FLORIDA
The Capital, PL-01
Tallahassee, FL 32399
(850) 414-3733

TABLE OF CONTENTS

Detroit, Michigan

Wednesday, November 16, 2016

at about 10:09 a.m.

— — —

(Court and Counsel present.)

THE LAW CLERK: Please rise.

The United States District Court for the Eastern District of Michigan is now in session, the Honorable Marianne O. Battani presiding.

You may be seated.

The Court calls MDL 12-md- 02311, In Re: Automotive Parts Antitrust Litigation.

THE COURT: Good morning.

THE ATTORNEYS: Good morning, Your Honor.

THE COURT: Welcome everybody. I'm glad that in this November date that our weather has held out for you. Okay.

So looking at the agenda, the very first thing we have is the report of the Master. Mr. Esshaki.

MASTER ESSHAKI: Yes. Thank you very much, Your Honor.

I'm really pleased to report that the major topic we have been dealing with in the last six weeks or so is the document production by the original equipment manufacturers, and there is currently pending -- the Court may recall that

we -- the Court allowed discovery on discovery so that the parties could learn about the document retention systems that were in existence at the OEMs.

That being done, the parties have met and conferred, they have differences, and we have set December 9th for a hearing on the serving parties' renewed motion to compel against the original equipment manufacturers.

Yesterday we met for nine hours. Unfortunately we were a bit aggressive in thinking we could get all of the OEMs through that period, that one day, but I am -- we did meet and we resolved the disputes between the serving parties and Toyota, we resolved the dispute between the serving parties and Subaru of America, we came close to and I'm convinced in the next couple of weeks we will resolve the disputes between the serving parties and Subaru of Indiana, we resolved the disputes between the serving parties and Nissan.

We have yet to address Honda, General Motors and Fiat Chrysler America. We have scheduled another day-long mediation for December 8th, the day before the hearing, at which I'm hopeful that we could make progress in resolving those, perhaps avoiding the hearing or at least narrowing down the issues that have to be -- that have to be heard that day.

I would be remiss if I didn't tell the Court that the attorneys, over 20 of them that were in that room yesterday, worked from 9:00 to 6:00 without lunch and accomplished, in my mind, a great deal in resolving those disputes, so my hat is off to all of them.

Thank you.

THE COURT: Okay. Sounds like cruel and unusual punishment or torture. I don't know. All right. Is there anything else, Gene, that you want to report on?

MASTER ESSHAKI: No, Your Honor. I think that's it.

THE COURT: Okay. The next item is the status report. I want to -- and part of the status report is the status of settlements. And, let's see, where is Mr. Hansel?

MR. HANSEL: Good morning, Your Honor.

THE COURT: Thank you for preparing the report.

MR. HANSEL: You're welcome. My partner, Randall Weill, brought it home this time.

THE COURT: Okay. I have a couple of other things that I would like but I don't know that this needs to be filed, and that is in the report either adding columns or doing a separate listing on the settlements. I would like the amount of the settlement, the attorney fee requested, and the attorney fee awarded, which would be a partial attorney fee in some of these, and also the remaining defendants. And

I say you could just do that for me as opposed to the record, I don't know that you want to have a specific document with settlements on the record, or if you care, I don't know what --

MR. HANSEL: Well, the status report is sent to chambers and it is not filed on PACER, so if that -- we could just add -- we could beef up the settlement section of the status report to include those items.

THE COURT: That would be great.

MASTER ESSHAKI: Your Honor, may I ask to receive a copy of that as well?

THE COURT: Yes. Would you please send a copy of that also to the Master?

MR. HANSEL: Yes, we will do that.

MASTER ESSHAKI: Thank you.

THE COURT: Thank you. This is a great help and I appreciate it. Thank you very much.

All right. The next item -- oh, while we are on settlements, I don't want anybody to panic but I am thinking, and I will discuss this in January, of at this point appointing a settlement master. He or she may need others to assist, I don't know, but this is something that I will discuss with you in January, but I think we talked a little bit about settlements last time and meetings when people didn't want to meet. I think we need to move forward, and my

thinking -- I know and I appreciate all of the work that Mr. Esshaki has done with the -- with this discovery issue with the OEMs but I don't know, I'm just ready to take a shot at this, so keep that in mind.

Yes?

MS. SALZMAN: Do you want a report on the settlements since the last status conference?

THE COURT: What is going to be in the settlement report, wouldn't they be in that?

MS. SALZMAN: Yes, that would be in there.

THE COURT: Yes.

MS. SALZMAN: Okay.

THE COURT: I think you've done wonders on what you have already accomplished in terms of the settlements, this is not to negate that so --

MR. PARKS: We do have --

THE COURT: Would you put your appearance on first.

MR. PARKS: I'm sorry. Manly Parks for the truck and equipment dealers from Duane Morris.

We do have a couple additional settlements to report that are not on the chart in the status conference because they have happened since then. We can put those on the record or not, it is up to Your Honor.

THE COURT: Well, let's put them on the record now so we all know what they are, why don't we do that, and the

same thing if you have --

MS. SALZMAN: I misunderstood, I thought you meant would they be in the next report. There are some that have not yet been disclosed to the Court but we could disclose those as well.

THE COURT: Right. Mr. Parks.

MR. PARKS: Yes. Thank you, Your Honor.

We are pleased to report settlements in the bearings case that are now documented and we will be filing a motion for preliminary approval early next week. These are settlements involving the truck and equipment dealers and Schaeffler, NTN and JTEKT.

THE COURT: And JTEKT. Okay.

MR. PARKS: Thank you.

THE COURT: Thank you.

MS. SALZMAN: Good morning, Your Honor. Hollis Salzman for the end payors.

We previously disclosed the settlement with JTEKT, Your Honor recently preliminarily approved that settlement. We also have --

THE COURT: Is this in the bearings or what are we --

MS. SALZMAN: That is in bearings, Your Honor, and one other part but mostly bearings. And then there is Yamashita Rubber, which we have a motion for preliminary

approval pending with Your Honor. We also have two other settlements both in the bearings case, that is the NTN and SKF -- with the SKF defendants, and those we hope to have presented to Your Honor in short order.

We also have about a half dozen other settlements that are very close to being completely settled, we are just finishing up the paperwork, and at that time we would disclose them to the Court.

THE COURT: Thank you.

MS. SALZMAN: Thank you.

MR. BARRETT: Ms. Salzman said we, she meant the end payors and the auto dealers, and there is one I think she didn't mention that is this brand.

THE COURT: Put your appearance on the record first.

MR. BARRETT: My name is Don Barrett for the auto dealers.

There is one that was not mentioned, this is brand new, Yamada, it has been settled as well.

MR. KANNER: Good morning, Your Honor.

THE COURT: Good morning.

MR. KANNER: Steve Kanner on behalf of direct purchaser plaintiffs.

In addition to the settlements we previously announced, I could advise Your Honor with respect to the wire

harness cases we have settlements in the drafting stages with three additional defendants, and are actively negotiating with two of the three remaining defendants.

THE COURT: Okay. So the wire harness cases are -- with the indirects are just about done, right?

MR. KANNER: I believe so, Your Honor, but I will let counsel for the wire harness --

MS. SALZMAN: Yes, Your Honor, that's correct.

THE COURT: That's why I wanted a list of who was left.

MS. SALZMAN: We will get you that information.

THE COURT: Okay. Thank you.

MR. KANNER: So with respect to the direct purchaser plaintiffs, we have settlements and/or are negotiating with all but one of the defendants in wire harness.

THE COURT: All right.

MR. KANNER: With respect to the other cases we have multiple negotiations in place, some settlements, that are reaching the agreement in principle stage, and I'm pleased to say we will be able to present those hopefully by the next status hearing, so there is movement and it is positive.

THE COURT: Thank you.

MR. KANNER: Thank you.

THE COURT: All right. Anybody else have anything on settlements?

(No response.)

THE COURT: Okay.

MR. KOHN: Your Honor, just one other matter?

THE COURT: Counsel?

MR. KOHN: Joseph Kohn also for the direct purchasers.

Just requesting the Court, we did file a preliminary approval motion just about a week ago, November 9th, with respect to a settlement with the Fujikura defendants, it is by stipulation, we don't want to reargue the matter here, it has been thoroughly briefed, but we request the Court to enter the preliminary approval order with respect to that settlement.

THE COURT: Okay. I thought I would remember all of these but, you know, now without looking at paper and having it written down I don't venture to say anything because I don't want to get my parts mixed up.

All right. The next item was the Court's expert or technical advisor as you call it. Who prepared -- Ms. Salzman?

MS. SALZMAN: Yes. It was a joint effort among the plaintiff groups.

THE COURT: Okay. I very much appreciate this,

I'll tell you that I am not going to do it at this time.

MS. SALZMAN: Okay.

THE COURT: I have looked at it and it is not what I had envisioned, and I want to wait on it, but I do want to address a little bit on the attorney fees. I'm sorry, I don't have the documents here so you will have to look at those of you who have settled, and I remember the last one -- one or two we did like 10 percent.

MS. SALZMAN: Well, you gave us a partial award on our fee request of 10 percent. We had requested more than that, I believe we requested 30 percent, and I apologize, I don't have those papers with me today.

THE COURT: As I said, I don't want to mention who is who without --

MS. SALZMAN: Yes, but that's just for the end payors. The dealers and the auto dealers and the truck dealers have a different story.

THE COURT: Right. But in further consideration of this I have decided to do this until I make the final percentage and that is to give you 20 percent. So those of you, like the end payors who got 10 percent, you could file your motion for an additional or an order for the Court to sign for the additional 10 percent, so that you would have 20, because when I go through it I am not doing less than 20 percent, that I know, so I shouldn't have done that

10 percent, I should have --

MS. SALZMAN: Okay. Thank you.

THE COURT: -- considered that, and since I'm quite positive about that percentage, I am not saying that's the end percentage, it may very well be, I don't know where I'm going from here.

MS. SALZMAN: Okay.

THE COURT: But I know the minimum is the 20 percent and so --

MS. SALZMAN: You would like us to prepare an order and present it to the Court?

THE COURT: Yes, yes, for those of you that I -- think it is just the end payors but I could be wrong.

MS. SALZMAN: Right now I believe it is the end payor motion that is pending with the 10 percent.

THE COURT: Okay.

MS. SALZMAN: Yes.

THE COURT: Because we will do the 20 percent as the partial, it may be the final, I don't know, but --

MS. SALZMAN: Understood.

THE COURT: -- we will do at least the 20 percent as the partial attorney fee.

MS. SALZMAN: Okay.

THE COURT: And then we will deal with the other fees on the cases as the motions later on.

MS. SALZMAN: Very good. Thank you.

THE COURT: Okay.

MR. HANSEL: Thank you, Your Honor. The direct purchasers do not have a motion for attorney fees pending right now but, as the Court is aware, all of the class plaintiffs have submitted their respective briefs outlining their proposed approach for the Court, you know, on future fee applications.

THE COURT: Okay.

MR. HANSEL: Thank you, Your Honor.

THE COURT: All right. Thank you. I appreciate all of that work, I -- believe it or not it was very helpful for me to come to this decision, but I'm not going to -- I don't think it is going to be worth the money -- the expense of doing that.

All right. Oh, I know what else. I haven't gotten attorney fees reports from you, plaintiffs, your hourly --

MR. FINK: We are not in this for fees, Your Honor.

THE COURT: Oh, gosh, and I have been worried about this.

MS. SALZMAN: Your Honor, were you talking about the time reports?

THE COURT: The time reports.

MS. SALZMAN: That is something -- since we recently filed the fee petition which listed all of our

hourly reports, we didn't know if the Court wanted us to continue to give you interim reports. The interim reports, as you know from our correspondence, include what we call unvetted time, the time that has not been reviewed by the co-leads. Going forward from the last fee petition we can submit to you the vetted time so you have a good idea of, you know, on a quarterly basis is basically when we have been submitting to you, and we could pick that up again if you would like, but I think the reports would be more -- will be more realistic because it will have the vetted time.

THE COURT: That would be fine.

MS. SALZMAN: Just so you know, they may look a little different than the time that was previously reported.

THE COURT: I was looking because as you know there is that Barton issues -- I think that's his name.

MS. SALZMAN: The objector?

THE COURT: The attorney who wants a greater fee.

MS. SALZMAN: Oh, that's not in the end payor case.

THE COURT: No, no. It drew me back to the attorney fees to look at them, and I think that's in the auto dealers' case.

MS. SALZMAN: It is.

THE COURT: So I kind of want to look at --

MS. SALZMAN: So is a quarterly basis still okay with Your Honor?

THE COURT: Yes, that's fine.

MR. PARKS: Your Honor, Manly Parks for the truck and equipment dealers.

Would you -- we have not been doing reports of that nature until now. Is that something that you would like us to begin in our cases as well?

THE COURT: I would because it may be become necessary later.

MR. PARKS: Is the January status conference appropriate, or would you like us to file that within a week or so after today?

THE COURT: You don't have to do it within a week or so after today, but I would like it well before -- at least the beginning of January, the sooner the better.

MR. PARKS: And with respect to all cases we are in?

THE COURT: Yes.

MR. PARKS: Okay.

THE COURT: Yes. The next --

MR. FINK: Your Honor, I'm sorry.

THE COURT: Yes, Mr. Fink.

MR. FINK: How would you like the direct purchaser plaintiffs to approach this, would you like us to --

THE COURT: The same way.

MR. FINK: Okay.

THE COURT: Follow the lead of the end payors and we will do it that way, okay?

MR. FINK: Okay.

THE COURT: Can you do it by -- soon?

MR. FINK: Yes, absolutely. And, Your Honor, there was a reference, and I just want to be clear about this, Ms. Salzman referenced the distinction between fully-vetted fees and those fees that are based on our original data that is entered and may not be the ultimate fees that we submit. We are going to be more on the edge of the pre-vetted fees, if you will, because we have not submitted fee petitions for most of our time.

THE COURT: That's fine. Okay. Thank you. You do want a fee?

MR. FINK: Well, Your Honor, you know that's why my son is in the courtroom, they wanted to make sure I didn't come here and I didn't want a fee.

THE COURT: Thank you.

MR. FINK: Thanks, Nate.

THE COURT: I know you can't say you are in it for the money but why would you be here? I mean, the defendants have to be here.

MR. KANNER: Your Honor --

THE COURT: It is strictly for the plaintiffs.

MR. KANNER: -- I'm happy to dispense with anything

he just said.

THE COURT: Okay. All right. Oh, the next item is compliance with Shane vs. Blue Cross. Since we last met we've got a new case that we have to specifically deal with, and I want to hear what you have to say but, you know, we have had a rash of erroneous filings where people are filing sealed things without marking them sealed. You know, Kay had 300 and some e-mails the other day, we woke up the administrator in the middle of the night and the marshal. This can't go on, this can't go on. So I'm saying to all of you, and we will discuss the sealing, you've got to be more careful. And even though you make an error there are ways to address that, and one of those ways is not in the middle of the night to call the court. That's above and beyond what needs to happen here. Okay.

MR. CHERRY: Thank you, Your Honor. Steve Cherry from Wilmer Hale representing the Denso defendants and speaking for the defendants.

We have worked with the parties, the defendants, the plaintiffs, to come up with a process to deal with the issues raised by Shane Group, and have discussed how to deal with both future filings and how to deal with the filings that have already been made.

And for future filings we have discussed a process where things if something has been designated as confidential

or highly confid3ential by a party or a third -- a nonparty, they would be filed tentatively under seal for 30 days and that would allow whoever has an interest in that information to come in and justify why some portion of it can be under seal, otherwise the seal lifts.

THE COURT: Okay. 30 days sealed?

MR. CHERRY: 30 days.

MS. SALZMAN: Well, we are working on the details now. The defendants provided the plaintiff groups with a proposal, unfortunately with the timing we were preparing for the hearing but we are going to turn our attention to that and just look at the nuances in the language, and we hope to have something to submit to Your Honor I would say soon, hopefully before the holidays, if not Thanksgiving shortly after I would think, that's for the prospective documents. And then --

MR. CHERRY: I was going say for the --

MR. KANNER: Go ahead and finish up.

MR. CHERRY: For the things that have been filed, the defendants have gone through all of the things that have been filed by them or by the plaintiffs that include the defendants' information, and have weeded that down to a relatively small number of documents that require some continued redaction. We think that we have come to some understanding on much of the information, I think the

complaints where there are redactions of factual allegations for the most part -- I think there may be an issue with the bearings complaint but other than that we would agree can be unsealed with the exception of individuals' names, people who haven't been indited or anything whose name may appear in a complaint just for their privacy interest, but the factual allegations would be available to punitive class members to see what the case is about.

THE COURT: Do you see now in light of the Blue Cross Blue Shield case, do we -- about attaching an explanation as to why it is sealed or a reason for the sealing is I think we need to --

MR. CHERRY: Exactly, and the going-forward process would require more than simply saying it was designated by the producing party. You need to explain why it is confidential.

THE COURT: I mean, the last thing I want after we go through all of this is to have it come back because of sealed documents.

MR. CHERRY: Exactly. Well, and that's why we provided -- we have discussed a process where we would have this 30 days because the person filing it may not be their information and if it is -- let's say it's an OEM's information, they ought to have the ability to come in and say why it is confidential. I mean, if it is your

information in your motion you can do that but somebody else may have more to say about it.

THE COURT: Right. I think the defendants have a lot to say -- I mean, may have a lot to say.

MS. SALZMAN: I think the parties are -- our goal is to have as limited amount of information under seal before the Court as possible.

MR. CHERRY: Right. So I think where we are landing on this is the complaints, dispositive motions would have ultimately we would hope nothing but individuals' names redacted, and there are a small number of documents that were attached to filings that are internal company documents that require some redactions here where there's sensitive business information, and we -- the defendants have gone through that, we are delivering proposed redactions to the plaintiffs, they can review, hopefully we will come to agreement and can present something to Your Honor in the form of a motion explaining why these things should be redacted, not just agreeing, and hopefully that will resolve it.

THE COURT: Anything else?

MR. KANNER: Yes, Your Honor. There are some procedures that are -- that we have been talking about for how to address the -- and the burden for sealing a document. The party seeking that document to be sealed within that 30-day period has obviously the burden of explaining why.

There are some -- I have some question in mind about who ought to be hearing those various motions. There are some suggestions that it be Your Honor, and I wanted to ask the Court for thoughts on this whether you would prefer to hear them or whether the Special Master should hear them. Obviously he's not being worked hard enough in this case, I'm kidding.

MASTER ESSHAKI: I can take it, bring it on.

MR. KANNER: It seems to me for purposes of judicial economy we should bring these matters to the Special Master, otherwise I could see your schedule being crowded with multiple motions and parties coming in and explaining why, and ultimately the Special Master makes a recommendation which is, of course, subject to your final determination, so it seems to me for purposes of judicial economy we ought to take that approach.

There is a second -- I'm sorry.

THE COURT: You want me to respond to that?

MR. KANNER: Yes. We would like some direction from you on that.

THE COURT: Okay. Gene, you are here so if you think you can take this on I think it probably would be good for the Special Master to do it because he's dealing with these documents and with the discovery and I think might be in a good spot to do it.

MASTER ESSHAKI: Gladly.

THE COURT: Is that reasonable?

MASTER ESSHAKI: Yes, Your Honor, gladly.

THE COURT: Okay. All right.

MR. KANNER: And I think part of that discussion needs to address the distinction between substantive issues and documents that really are -- that go, for example, to the heart of the conspiracy; guilty pleas, internal documents of the companies that address specifically those issues, we think ought not to be sealed. However, the documents or the materials that Mr. Cherry just referred to, names of individuals, I think that's right.

MS. SALZMAN: I don't think we need to address the specifics here today, we don't have the documents and --

MR. KANNER: No, but I'm just giving our observations of what makes sense.

Secondly, there is distinction between those types of materials which would seek to be sealed that are substantive and those which are really discovery issues, and I think there is less of a requirement under Shane that a privately held company would need -- can make a justification, a good argument, for sealing certain business operating documents that have no bearing on the determination of the liability and are of no moment to class members or objectors determining whether they should, in fact, proceed

with an objection or being fully advised in the case.

MR. CHERRY: Your Honor, I think we should deal with these issues in the context of real documents as we go forward.

THE COURT: I think so too, and I think as long as Mr. Cherry or other defense counsel is there, you know, I think it will be worked out depending on the individual documents.

Ms. Romanenko?

MS. ROMANENKO: Your Honor, I agree with Mr. Kanner and, you know, we will work with the others to work out the specifics, but we do want to make a distinction between what Shane referred to as substantive documents and discovery, right. So what Shane stated is that the public interest is focused on conduct giving rise to the case, so the facts of the conspiracy, right, because that's what an objector would want to look at or a potential opt out to see if they want to object or opt out. What they don't want to see is information about how somebody stores their files or how they calculate some payment that comes in, that's information that our clients need.

THE COURT: Okay. I'm not ruling on any general thing right now. You will work out your orders, and I am so glad to see that you have come to this resolution, it just reaffirms in my mind how good you are, and I thank you.

MS. SALZMAN: We have gotten to know each other over the years.

MR. KANNER: Thank you very much.

THE COURT: I don't see any black eyes yet so we are okay.

The other thing is in the transcripts, the Court cannot seal something without a motion, I need to have it on the record to seal, or a statement to seal if you are here in court, and if you make an error and you want something sealed you have to file a motion, it cannot be done automatically by anybody, the clerk or anyone else, there has to be a record of this. You would title your motion emergency motion to seal so that we know we need to deal with it right away, but that's what you have to do.

And when you are in court, and I know we have gone through this a couple of times already, when you are in court and you want something sealed you have to say stop and say seal this and give your reason because we have to know the reason now for these things and then -- I guess we kind of always had to know the reason but it has been made clearer that we need a reason, and then at the end when you are done with the sealed discussion or name or whatever it is then say, you know, end of seal or done because I can't have -- I cannot have the reporter going through and looking for statements which he thinks fits a category that you said and

seal them and we can't do that without showing everybody anyway because maybe had it been brought up publicly there would be some question, it is not enough to say this is confidential, there has to be some basic reason. So I know this is difficult when you are arguing, I know it is difficult, but I am going to tell you if you don't say -- at least stop us and say this is confidential it is not going to be sealed without a motion for everybody to see.

Ms. Romanenko?

MS. ROMANENKO: Your Honor, just to clarify, as I think you mentioned, sometimes it is when speaking extemporaneously and engaging in a conversation --

THE COURT: It is difficult.

MS. ROMANENKO: -- you don't think to stop yourself to deal with that issue.

THE COURT: Yes, it is difficult.

MS. ROMANENKO: Is it possible in the event that something was missed to file a motion like we discussed requesting certain portions to be redacted with an explanation of why they need to be redacted? What I'm thinking of is a process like what's in the protective orders, I'm looking at paragraphs 8-C-3 of the AVRP protective order just as an example that says the producing party may designate portions of transcripts of public proceedings as confidential or highly confidential, outside

of attorneys' eyes only, but any such designation must be made within 30 days of receipt of the final transcript.

So what I'm wondering is whether pursuant to that provision we can make a motion after the hearing and say we are requesting that -- we said these sentences, they were highly confidential, we are requesting that they be sealed from the public?

THE COURT: Because.

MS. ROMANENKO: Because, yes, yes, absolutely.

THE COURT: Yes, but I have a question about that 30 days. I mean, the final transcript is filed so you have it for 30 days, and then -- but the only -- I mean, it is public at that point if somebody wants to give it away, right?

MS. ROMANENKO: I think there is --

THE COURT: It is not on the docket free, right?

MS. ROMANENKO: So if we decrease the period does that make it more workable, if we were to make it seven days or something like that? My understanding was that there was --

THE COURT: It is not workable for me, it is for you, it is out there for 30 days, that's all I am saying, that's a good amount of time.

MS. ROMANENKO: My understanding was that there was some period of time between when it was sent out to the

attorneys and when it was put up on the docket? No, that's not the case.

THE COURT: See, it is not going to be sent to you in advance to look at it, you order the transcript, this is the transcript.

MS. ROMANENKO: Understood.

THE COURT: So you don't get it in advance. Now you have it and then now you can follow the protocol of the 30 days for a motion.

MS. ROMANENKO: Okay. Thank you.

THE COURT: Ms. Salzman?

MS. SALZMAN: That's something we can talk -- we can talk about the transcript sealing and perhaps put that in the --

THE COURT: That would be a good thing to consider also, yes.

MR. KANNER: I agree, Your Honor.

THE COURT: Okay. I just want to stress the fact that it is really beyond anybody's control to say okay, now this is confidential, it is struck; you've got to do it in writing with your reasons or here on the record. Again, I state, I know it is difficult but we can handle it. Okay.

And this is kind of like preaching to the choir, because I think most of you know this, but if you go on my page or whatever on the court docket you will see the

instructions as to the training on how to do it, and that might change with whatever you all come up with.

All right. Next item, bearings, anti-vibration rubber parts and OSS -- what's OSS, I don't even remember -- occupant safety systems. Okay.

MS. TRAN: Good morning, Your Honor. Elizabeth Tran for the end payor plaintiffs.

The agenda item is a little misleading. My understanding is that no plaintiff group intends to address occupant safety systems this morning. All plaintiff groups, however, seek to discuss their respective motions for an extension to file class certification motions in bearings and AVRP as part of this agenda item.

THE COURT: Wait a minute. Extension of class action motions?

MS. TRAN: Class certification motions.

THE COURT: Class cert motions. Yes.

MS. TRAN: As this Court is aware, end payors filed a motion for extension of five months in bearings and AVRP on November 2nd due to ongoing delay with OEM discovery. The bearings defendants do not oppose this motion but the AVRP defendants do. At this point end payors' motion isn't fully briefed yet, I believe the DPP motion isn't fully briefed yet either, but I'm happy to argue the motion today if the Court wishes given that this is a critical and urgent issue in

light of class certification motions being due three to four months from now.

THE COURT: No, I don't and I won't need argument on it. I would like the replies, I would like the full briefing on it. This is a critical issue and I think I know where you are going given the discovery that needs to be done yet and I assume that's the basis of your motion. I have not read the motion yet.

MS. TRAN: That's correct.

THE COURT: But it doesn't take a star to know where you are going with it, and so I will let you know that in -- at the January meeting I will be prepared to rule on the deadlines for those. I know it is pushing it close to what you -- when is your first -- is it March?

MS. TRAN: It is March 20th.

THE COURT: Yeah, we are getting close.

MS. TRAN: I am -- just given the OEM discovery resolution time line I don't believe that that would be resolved until early February at the earliest, and so if class certification in bearings is March 20th that gives us less than two months.

THE COURT: Okay. We will see what happens, and I want to know how much time is really needed so be prepared in January, I want to know actual times, how long it is going to take to get this information.

And I will tell you another thing, I want to consider by then whether or not I will use a settlement master and whether or not I want to stay while that master is working. Just food for thought for the future.

MS. TRAN: Okay. So we will be prepared to argue it in January.

THE COURT: Yes. Thank you very much.

MR. PARKS: Your Honor, just briefly on this issue. I would only note that and remind the Court that because of the order of the OEM discovery process with the auto -- the major auto OEMs at the front end and the fact that a number of the truck and equipment OEMs are essentially at the back of the line, we have filed a supplement and joinder to the motions asking for an extension, we have asked for a little extra time, six additional months instead of five. And I just wanted to remind the Court of the status of the OEM discovery as it relates to the truck and equipment OEMs because if we are on the same schedule as everyone else and our OEMs are at the back of the line, as it were, in terms of OEM discovery we have as a practical matter less time than the auto folks do to get that information and process it and make use of it. I just wanted to remind the Court of that reality. Thank you.

THE COURT: Thank you.

MR. SPECTOR: Good morning.

THE COURT: You know, it is possible too that we do this motion before the January conference for extension of time, that's also possible.

MR. SPECTOR: Good morning, Your Honor. Eugene Spector on behalf of direct-purchaser plaintiffs.

THE COURT: Good morning, Mr. Spector.

MR. SPECTOR: We too have a motion pending, the response to our motion was filed I believe Monday evening, we have a reply that we will file, and so --

THE COURT: On this issue?

MR. SPECTOR: On the issues of extension of time, we have filed a motion seeking an extension of five months as well, in fact, we filed it before the end payor plaintiffs did, based upon the discovery issues that we have. I am not going to argue that right now, Your Honor, as you said we have put it off until it is fully briefed.

But I did want to mention that with regard to the AVRP case we filed an AVRP case yesterday so we are not looking to be anywhere close to the same schedule that is already in place for the EPPs, but we also don't want ours to in any way to delay what's going on there. I just wanted to advise the Court.

THE COURT: You filed a case yesterday?

MS. SPECTOR: Yesterday, I believe, yes.

THE COURT: We had a new part too yesterday or --

MS. SPECTOR: There are other parts, right, but this is not by us yesterday, only AVRP yesterday.

THE COURT: Only AVRP.

MR. SPECTOR: Thank you.

THE COURT: This case kind of has a life of its own, doesn't it? It just keeps going on. I mean -- okay. I mean, if we are thinking five- or six-month extensions then we are talking -- I'm thinking out loud here, we are talking August, September for the filing of the class cert, and then by response and hearing we are talking another year or so before we may have a class cert -- a certified class or a non-certified class, which we are all interested in finding out.

MR. HEMLOCK: Your Honor, Adam Hemlock, Weil Gotshal on behalf of the Bridgestone defendants.

I would point out as Special Master Esshaki noted, the OEM process is moving along pretty well, and I think your idea of waiting is a good one only because there may be some movement in that regard in the next month or so that that may be relevant for you to consider when you make your decision.

THE COURT: Yes. I would like to see where the movement goes before I have the OEM -- the non-party OEMs start producing. I understand this is a very expensive project and very time consuming and very voluminous.

MR. HEMLOCK: We are doing our best to avoid that

but we will see how it goes.

THE COURT: Okay.

MS. TRAN: Your Honor, I just wanted to mention that in Section 4 of the end payor motion for extension we mapped out the deadlines under our proposal and we have the hearing on class certification in June 2018.

THE COURT: June 2018?

MS. TRAN: Yes.

THE COURT: '16, '17, '18. Okay. You know, I'm on senior status and I do want to see this done. Okay.

Then the next thing we have is the date for the next conference. I was thinking June 7th as opposed to May. Is there -- anybody have any -- we have two dates, May 24th and June 7th. Ms. Salzman, you looked very funny at that. I'm just wondering?

MS. SALZMAN: My daughter is graduating from middle school, not to be selfish in a roomful of people and --

THE COURT: Well, we do have graduations to deal with and that's -- now, a lot of them were moved up to May and that's why we said maybe not May, maybe June, so maybe --

MS. SALZMAN: June 9th I could make it home for that.

THE COURT: Okay. All right.

MS. SALZMAN: Thank you for considering that.

MASTER ESSHAKI: Your Honor, may we reserve the 6th

for Master motion hearings?

THE COURT: Absolutely. Let's say June 7th and June 6th for the Master's hearings.

MR. FINK: Tuesday, June 7th -- oh, I'm in the wrong year.

THE COURT: You will not get any fees if you can't keep track of the year.

MR. FINK: Okay. I have to go. Thanks, though.

THE COURT: Is there any other matters anyone wants to bring up before we go to motion?

MR. CHERRY: Yes, Your Honor.

THE COURT: Mr. Cherry.

MR. CHERRY: Two matters. We have a motion to dismiss in oxygen sensors and spark plugs that we need a hearing date for -- we would like to request a hearing date. I think there was some discussion of December 8th or December 6th but frankly whatever day works for Your Honor.

MR. FINK: We had talked among the parties that December 8th worked, but yesterday Master Esshaki set aside December 8th as a date to continue the OEM discussions, so I think December 6th works for all of the parties, that's if the Court decides that it wants to hear oral argument on those motions.

MR. CHERRY: Well, we would certainly request oral argument, Your Honor.

THE COURT: Is it requested?

MR. CHERRY: Yes, Your Honor.

THE COURT: That date is really booked. Let me go back and see if there is anything in the morning.

MR. CHERRY: Your Honor, we would like to have it heard as soon as possible but if there were no dates before January 25th we could --

THE COURT: No, we can find a date, I just have to search it out. How about December 13th, that's a Tuesday?

MR. FINK: Your Honor, the Court had said -- if I heard correctly the Court -- I think I heard the Court indicating that there was a problem with the 8th on the Court's calendar, was the 6th a possibility? The week of the 13th I was expecting to be out of town but if --

THE COURT: Okay. Let me see. You know what, the 6th is a possibility. I have a trial scheduled that I think is going to be adjourned, I'm about 90 percent sure, so let's set it for 10:00 --

MR. CHERRY: Thank you, Your Honor.

MR. FINK: Great, Your Honor.

THE COURT: -- on the 6th.

MR. CHERRY: And, Your Honor, one other item. So for the Denso defendants we filed a motion for summary judgment yesterday and we would like to get a briefing schedule in place so as to have that argued on January 25th,

it is an 11- or 12-page motion, we think it is a very simple straightforward motion.

THE COURT: 11 or 12 pages?

MR. CHERRY: Yes. We have proposed as long as a month for opposition, that would give us time to do a reply and Your Honor to have three or four weeks to consider it before the hearing, but we have tried to get agreement on a briefing schedule and haven't been able to do so.

THE COURT: You want it on January 22nd or 24th?

MR. CHERRY: The 25th when we are here for the status conference.

MR. SPECTOR: We have a somewhat different view, Your Honor.

THE COURT: Which is?

MS. SPECTOR: We believe the summary judgment motion involves many of the same issues that we are going to see at class certification. And I haven't read the summary judgment motion, it was filed I think late Monday.

MR. CHERRY: It was filed Monday, it is 11 pages, I can read it for you but --

MS. SPECTOR: Well, that would be very nice of you, would you read it to me? I certainly want the inflection.

THE COURT: So class cert motions are only going to be 11 or 12 pages?

MS. SPECTOR: I only wish, Your Honor. Under the

right circumstances that probably could be the case but the way the law has evolved I'm afraid that's gone.

We view the issues, at least based on the motion that we saw the other day on discovery with the OEMs in which Denso has asked that certain discovery of the OEMs be delayed pending resolution of their motion for summary judgment on the basis that their motion for summary judgment is going to involve fundamentally two arguments; one, that there is no proof of a conspiracy that involves -- an overall conspiracy that involves wire harness products, number one. And number two, because of that since none of the named plaintiffs have purchased ECUs, which are the only thing that Denso sells here, therefore that case can't proceed, it basically should be dismissed.

We believe that there is going to be evidence that we are going to be able to show of the overall conspiracy. I mean, just off the top of my head Denso pled guilty to participating in the conspiracy with regard to ECUs, Yazaki pled guilty to a conspiracy involving wire harness products that included ECUs, so at least factually there may be some question, and under those circumstances it seems to me that we are going to be overlapping in a number of issues, for example, adequacy and typicality I'm sure the argument is going to be made in exactly the same way that these class plaintiffs are inadequate because they didn't buy ECUs, so it

just seems to me, Your Honor, with that overlap and when you add to that the fact that if the motion for summary judgment is denied, and I know Mr. Cherry doesn't think that's possible, but if the motion for summary judgment is denied then there is going to be a delay in the wire harness class certification process because he's going to want to have his discovery of the OEMs, which will add two or three or four months to that process.

So it struck me, Your Honor, that the easiest way to handle this and the most efficient way to handle this is to put the summary judgment motion on the same schedule as the class certification motion, that way we move them all along at the same time, any discovery that would have to be done will be done and we can get all of those issues resolved in one fell swoop.

MR. CHERRY: Your Honor, if I could respond to that? There is no evidence of an overarching conspiracy. They have responded in their request for admission, we have asked them is there evidence that Denso participated in a conspiracy for this product or that product or that product or that product. It all comes down to body ECUs. The only evidence as to Denso is as to the sale of body ECUs, which we did plead to for sales to Toyota, that's it. And there is no evidence we ever conspired with anybody on any of these other products. Discovery is long since over. We have produced

our documents -- DOJ documents in 2012, produced our priority documents last year in September, they have completed their -- all of the document production, they have completed their depositions, there is no evidence of the type of -- 13-part conspiracy they have alleged, so it all comes down to body ECUs and nobody here bought an ECU from anybody ever.

THE COURT: Okay. We are kind of arguing the motion here.

MR. CHERRY: Right.

THE COURT: I don't want to hear the motion, I want to do the briefing. I will take the briefing on the normal schedule.

MR. CHERRY: Yes, Your Honor.

THE COURT: And I will issue an opinion if you don't want to come in and argue it. If we can't get it on in January because of schedule then we can't, we have lots of motions coming up in January so I can't promise you your motion is going to be on, if not we can set another date.

MR. CHERRY: We would certainly appreciate an argument on it. We also think -- coming back to the OEM discovery, what we have proposed is we think it is a reasonable approach, and I know you didn't want to address scheduling, but if this -- if we prevail on this motion we don't need OEM discovery on those 13 products which the OEMs have said is going to be very burdensome, and so all the more

reason to decide this motion. If we prevail we can avoid all of that discovery on these third parties. Thank you, Your Honor.

THE COURT: Okay.

MR. SPECTOR: Thank you, Your Honor.

MASTER ESSHAKI: Your Honor, may I have one moment?

THE COURT: Yes.

MASTER ESSHAKI: Mr. Cherry, with respect to what we discussed yesterday regarding the Denso stipulation -- proposed stipulation about deferring discovery, would you please reduce that into a proposed order, circulate it, and I will put it on the agenda for the December 9th hearing?

MR. CHERRY: I will. Thank you.

MASTER ESSHAKI: Thank you.

THE COURT: Great. Okay. Anything else?

(No response.)

THE COURT: Nothing else. Okay. Then we will begin our motion hearings.

All right. This is the first one, radiators, T.Rad defendants? There you are.

MR. SIMMONS: Here I am. Good morning, Your Honor. Peter Simmons from Fried Frank for the T.Rad defendants.

And the plan is I'm going to take the lead for all the defendants on the joint motion, and then Mr. Hemlock has a separate motion for just the Calsonic defendants that we

will deal with afterwards.

So there are three fundamental problems with the truck dealers' radiators complaints. The first is a Twombly problem which affects the entire complaint, which is basically there is no basis alleged factually to infer a conspiracy relating to radiators for trucks. The second point is a statute of limitation problem, which if you dismiss on Twombly grounds you don't need to get to, but if you were to find them, we would suggest you shouldn't, but if you were to find that they can plausibly infer a truck radiators' conspiracy from the passenger car radiators' conspiracy then their claim is untimely because that inference could have been drawn no later than July 2011 when there was ample publicity about the radiators' antitrust investigation.

And then the third point I want to address is a standing point which affects part but not all of the claims but nonetheless would materially streamline the claims in the case. And while you normally think of standing being a threshold issue that should go first, here I think you only need to get to it if they get past Twombly because Twombly would get rid of all of the claims and the standing point only addresses some so I'm going to do it counterintuitively and do standing at the end.

THE COURT: Okay.

MR. SIMMONS: The truck plaintiffs' complaint here essentially rests on nothing more than a propensity inference. They say that the defendants, including my clients, pled guilty to a conspiracy relating to passenger car radiators, or there are class claims that have been allowed for the end payors and the auto dealers regarding passenger car radiators or there are governmental investigations relating to passenger car radiators, in other words, these defendants are bad people, and therefore they must also be engaged in a conspiracy regarding truck and equipment radiators, but there are no facts pled in the complaint from which that inference can plausibly be made.

Now, notably this is already their amended complaint because we made this argument in a motion to dismiss the first complaint, they were on notice of it, they amended the complaint and they didn't fix any of this. They knew they had to try and they couldn't do it. And same for some window dressing, all they are alleging is that we conspired regarding car radiators and we also make truck radiators. All right. So what? Cars have wheels.

THE COURT: What is the similarity between a truck radiator and a car radiator?

MR. SIMMONS: I'm sorry?

THE COURT: The similarity between a truck radiator and a car radiator?

MR. SIMMONS: There is a similarity. I mean, cars have wheels, trucks have wheels, they're both on roads, but a car is not a truck and you can't just infer that because there was a conspiracy as to one product that there must have been a conspiracy as to the other product. They don't allege any facts, they don't allege any communications, there is no specificity, there is no who, what, when, where. They don't say Mr. X or Ms. Y did the following on the following date, so there are no facts about any communication regarding truck radiators. They don't identify a single bid or RFQ for truck radiators that was allegedly rigged. They don't identify a single governmental investigation affecting these defendants relating to truck radiators. They offer nothing but the naked assertion, on information and belief, by the way, that the same employees were involved but with no specificity as to who, what, when, where.

Now, the Court has twice rejected the truck plaintiffs' claims that a truck-related conspiracy can be inferred just from the existence of a passenger car conspiracy. There were two orders that you issued on December 30th, 2015 in the wire harness case; one dismissed the truck plaintiff claims against Mitsubishi Electric that rested on nothing more than a criminal plea regarding parts for passenger cars, and then separately you said you had no jurisdiction over Fujikura because the U.S. guilty plea and

the Japanese FTC -- the JFTC order both related to only passenger vehicles and did not support an inference of similar conduct regarding parts for trucks.

In both decisions the allegations of the complaint that you quoted in your opinions are almost identical to what they are alleging in their amended complaint against us here. The Court was very clear, while the truck dealers' complaint, quote, contains specific allegations about antitrust conduct in the passenger vehicle market, quote, a defendant's conduct relevant to the passenger vehicle conspiracy does not establish the defendant's involvement in the trucks and equipment conspiracy.

The same is true here. Similarly you said that the plea -- the criminal pleas and the governmental orders relating solely to passenger cars and that don't mention trucks or equipment do not suffice to establish a truck-related conspiracy even when coupled with what the Court called general allegations that the defendants manufacture and sell the disputed product. Again, absolutely analogous to what we are dealing with here. None of the pleas, none of cease and desist orders, none of the consent decrees in the U.S. or elsewhere against any of these defendants says one word about the trucks, and the mere fact that cars and trucks both have radiators is not a basis to infer that the conspiracy repeated in the truck context.

As we pointed out in our opening brief, you know, refrigerators have radiators but you can't infer a refrigerator conspiracy from the fact that there was a passenger car conspiracy.

THE COURT: But they do allege -- the TED plaintiffs do allege that you communicated and conspired.

MR. SIMMONS: In just those words, the defendants communicated with no specificity. That's not sufficient under Twombly to meet the factual test to plausibly draw the inference. Merely offering the bald conclusion, essentially tracking the elements of the claim, that the defendants conspired, the defendants communicated, the defendants rigged bids, if that's all they had to do Twombly is meaningless. They are basically just offering naked conclusions to track the elements of the cause of action.

And, you know, when the Court denied the end payor and auto dealers' motion for leave to file their consolidated-amended complaint the Court rejected the idea that there was a single-overarching conspiracy and said you've got to take it product by product. The same logic applies here; you can't just assume because the defendants made radiators for cars and radiators for trucks that everything that the defendants made was the subject of a conspiracy just because the passenger car radiator was.

And all the rest in their complaint frankly is just

a lot of noise words, it is either limited to passenger cars or it is in that category we were just discussing of wholly conclusory nonspecific allegations. So they will do things like list by name every truck company that we allegedly sell radiators to and then they just say so there must have been communications about those bids. Again, a naked conclusion, no facts, nothing that actually supports a logical inference.

THE COURT: You want dates or some indication of a meeting or something more specific?

MR. SIMMONS: Something. So we submit, Your Honor, that under Twombly that's not sufficient and, you know, just saying we sell car radiators to companies that also make trucks doesn't establish a truck radiators conspiracy, and, as we said, the Court has already rejected this several times.

While we note that in the end payor and auto dealer cases the Court did uphold some pleading against the Twombly challenge, and we dealt with this at pages 19 and 20 of our brief, those all contained far more detail than the truck plaintiffs' complaint does here as to the who, what, when, where. None of those cases where you upheld it against the Twombly challenge was a truck complaint, and critically that also means that because those were passenger car complaints they were also amply supported by the criminal pleas, the JFTC consent decrees, the cease and desist orders, again, the

things that the truck plaintiffs here don't have.

So that in a nutshell is the Twombly problem, it is an overarching problem, and they don't just get to say you were a bad guy once, you sell other products, you must have been a bad guy again, and that's really all this complaint says.

THE COURT: Okay.

MR. SIMMONS: Moving on to statute of limitations, we pointed out as the Court previously recognized that there was publicity starting in 2010 about antitrust investigations there into wire harnesses, and by July of 2011 there was publicity that the antitrust investigations had spread to radiators. The plaintiffs don't dispute those dates and events in their opposition.

It is also undisputed that their state law claims are governed by three- and four-year statute of limitations and that their complaint wasn't filed until November of 2015, more than four years after the publicity about the radiators investigation.

THE COURT: The publicity was in July of 2011?

MR. SIMMONS: 2011 as to radiators, earlier as to the other parts, but specifically as to radiator, what they are suing over, July of 2011. So they said we had no way to know from that news coverage that those raids and investigations might affect trucks, those were all about

cars. Well, that, of course, is our Twombly point that you can't infer one from the other. So if you agree with them that you can't infer bad acts about trucks from what they did about cars, well, then they have just made my first argument for me, maybe they are fine on limitations but then they are out of luck on Twombly. Conversely, if you think they can overcome Twombly and it is proper to infer a truck conspiracy from the mere fact of a passenger car conspiracy, and, of course, we don't think that you should, then their claim is time barred because they were on notice of the facts that they say allowed them to infer the truck conspiracy. So one way or the other this case has to be dismissed.

Now, the Court's ruling in wire harness trucks, and this is the third opinion you issued December 30th of last year, is not to the contrary. There the Court gave the truck plaintiffs a pass on the statute of limitations defense and said the case can survive motion to dismiss on Twombly grounds because the facts giving rise to an inference of a conspiracy in that case came to light later, but were then strung together in the complaint with requisite specificity to support the inference.

But here at the time -- rather there at the time the facts first became known in that case there was no basis to infer. The critical difference here is that they don't allege anything new that they learned and that came to light

after July 2011 relating to our conduct about truck radiators. They point to paragraphs 186 and 187 of their complaint where they say that the JFTC announcement in March of 2013 in the European Commission announcement of March of 2014 were the first notice they had that a conspiracy supposedly extended to trucks but, of course, as they further admit, those related to bearings, not radiators.

So they again make our point for us two paragraphs later in 189 of their complaint, they say although there was disclosure of certain facts indicating that the government investigation involved price fixing for automotive parts, and they italicize automotive, no indication that the public domain was available, that parts for trucks and equipment, again italicized, were involved in the conspiracy being investigated. Again, this goes back to our you can't have your cake and eat it too argument. Either there is no way you can draw the inference from cars to trucks or if you drew the inference then they are out of luck on statute of limitations. In other words --

THE COURT: So the two dates that you really are arguing about are the July 2011 date and then the March -- the plaintiffs want the March 2013 date?

MR. SIMMONS: Correct, but they point to nothing that they learned relating to truck radiators since July of 2011. The difference between this and the wire harness case,

and in the wire harness you said well, in retrospect at the time the conduct was in the newspapers there was nothing there that necessarily said the conspiracy affected trucks, subsequent facts have come to light that now allow them to string together a complaint that survives Twombly based on the incremental facts they have learned later but they have now put in their complaint. But here they didn't do that, here they said we had no idea back then and we have nothing new to offer you now since we have learned since then.

So if it wasn't sufficient on statute of limitation grounds then they have nothing that helps them on the Twombly point here, and if on the other hand they say oh, no, we can just draw the inference because you are bad guys and you engage in all of this conduct and truck radiators and car radiators, well, they are all just radiators, well, that inference again should have been drawn in July of 2011, so they can't have it both ways, either on Twombly or on limitations this complaint should be tossed.

THE COURT: Okay. How about the standing issue?

MR. SIMMONS: So turning to standing, it really is a gating issue, it is jurisdictional, and the Court is allowed, indeed required, to consider relevant facts. We put in voluminous evidence as part of our motion from the plaintiffs' own witness at the 30(b)(6) deposition and from their own website showing they do not trade in equipment.

These are dealers in truck, not in equipment. They define their class as truck and equipment but it is really two very different buckets. Trucks are trucks. Equipment they define as everything from bulldozers to tractors to railway cars to mining equipment, and you know what, they don't sell any of it, and they don't dispute that in their papers. We put in all of the evidence that says they don't sell it, they don't buy it, they don't trade in it, and they didn't dispute any of that.

Instead what they are asking the Court to give now is what I will call a lawyer's equivalent of a homework pass, please excuse us from having to do this now, Judge, we will just deal with it later at class cert after we've taken lots of discovery. But they don't have a right to sue about equipment, and to put the defendants to the burden and expense of all of that discovery for products that they don't trade in and when no relief they seek to obtain will make one iota of difference to them. This is what we called in our brief the roving policeman theory; it doesn't affect me but I know someone who may have been affected so let me go pursue this claim and we'll deal with it later.

They don't have a right to enforce the antitrust laws about product that they never bought and sold and that affects other people. That's an interesting job for DOJ or state Attorney Generals but not for private litigants. A

private litigant has to show injury, in fact, to himself, and we cited a litany of cases at page 11 of our brief for that proposition that, you know, you can't sue about products that you didn't buy and where you weren't injured.

And other than arguing let's just kick the can, we will come back to this at class cert, and we will come back to this at class cert and we will come back to that in a second, their only defense really is to point to the 6th Circuit decision in Fallick. Now, Fallick, of course, reiterated that individual standing is a prerequisite and that you don't gain standing merely by saying I'm suing on behalf of a class. But Fallick involved a factually very different situation, it involved several health insurance plans from the same insurance carrier with the same language that was interpreted the same way. The plaintiff was covered by one policy but not all three, and the 6th Circuit said that's okay, he has a concrete injury of his own and those on whose behalf he seeks to sue have the exact same injury relating to the exact same policy language interpreted the exact same way, and it focused on that uniformity of the policies and the uniformity of the conduct to get there.

So that's more like the end payor plaintiffs here saying, you know, we bought Ford and GM and Honda cars and can also sue for the same part incorporated in a Toyota car.

THE COURT: Would you slow down?

MR. SIMMONS: I'm sorry. I'm from New York, I talk fast.

THE COURT: I recognize that.

MR. SIMMONS: So the truck dealers are not just saying, you know, we sell Peterbilt trucks and we want to sue for the same part in Volvo trucks, we are not challenging standing for that. They are saying in effect we want to sue about those radiators for the refrigerators that I mentioned earlier, only here it is radiators in bulldozers and tractors and railway cars and mining equipment, and that's a far cry from what the Court of Appeals countenanced in Fallick. It is not -- these are not uniform products, you know, any more than you can say that an Intel processer chip is incorporated in a smart phone and in a laptop and so I bought a laptop but I want to sue about smart phones; it doesn't work that way.

So what about their argument let's just kick the can and defer this all to class cert? No, you can't do that. Phallic makes the point that a potential class representative cannot acquire standing by virtue of class action, that is expressly held at 162 F.3rd at 423.

You don't get to just come in here, put the defendants to the trouble of discovery and say well, we will figure out later if anyone has really been hurt. The damage is done, it is done to us. They don't get to put us through years of discovery and motion practice on the grounds that

don't worry, we will put out a newspaper ad and mail notices out in a couple of years and we will find someone that this case really matters to. That's not how standing works. It is a threshold requirement for a reason so even if somehow the claim were to withstand Twombly and the statute of limitations, which we don't think it should, the claims relating to the equipment, anything other than trucks must be dismissed.

Other than that, Your Honor, we did make some additional points in our brief relating to particular problems on particular state statutes, that's set out in the brief and I'm not going to spend time rehashing that this morning.

THE COURT: So if you had a piece of farm equipment that had a radiator in it, would that person not have the same damages as a truck with a radiator?

MR. SIMMONS: It is a different product so if they had a dealer in farm equipment and if they could show with the requisite Twombly specificity some other party could come in and say we actually bought and sold farm equipment, we are harmed, but they don't buy and sell farm equipment anymore than they buy and sell refrigerators.

THE COURT: Okay.

MR. SIMMONS: And just because a radiator is in one doesn't mean they have roving license to bring suit.

THE COURT: Okay. Thank you. Response?

MR. McCONNELL: Good morning, Your Honor. Shawn McConnell from Duane Morris on behalf of truck and equipment plaintiffs.

THE COURT: Good morning.

MR. McCONNELL: Good morning. So I will start in the same order that defense counsel went this morning and address the Twombly issue. It sounds like that defendants would like to impose upon plaintiffs in this case a fraud particularity pleading standard that is just not the case on a 12(b)(6) motion. Also defendants try to cherry-pick individual allegations and target those specific allegations as not meeting the pleading standard rather than looking at the entire complaint in its whole. And when you look at the entire complaint in the whole you have all defendant entities have pled guilty to fixing the prices of radiators, and we have several dozen of allegations that all of the defendant entities have sold radiators to --

THE COURT: To cars, they pled guilty to the cars?

MR. McCONNELL: That's right, Your Honor, to vehicles. And we are -- we have dozens of allegations that those sales from the defendant entities to OEMs included overlapping OEMs that sell to both trucks and equipment and to cars including some OEMs that just deal in trucks and equipment. So even though the guilty pleas only touched on

radiators to automobiles, these are the predominate manufacturers of radiators for trucks and equipment and cars, and when you look at the market conditions that are alleged in the complaint then the opportunity to collude and how the RFQ process works and the communications between defendants it would be illogical for defendants who are selling radiators to cars to not also use those car prices as a key to what they ultimately charge for radiators that are used in trucks and equipment.

If the trucks and equipment radiators were priced differently than the prices of the radiators that were sold to cars, the overlapping OEMs that sell both car radiators and truck equipment radiators would be able to discover the conspiracy. So it doesn't make sense that the radiators that were sold to truck and equipment would not be inextricably intertwined with the radiators that were sold but to trucks and equipment dealers.

THE COURT: And they are the same product, we aren't talking about --

MR. McCONNELL: Yes, we are talking about radiators. They prevent vehicles from overheating. Now, of course, there are different types and grades of radiators; if it is a small car versus a lawn mower or a tractor or a Mack truck, of those there are different grades, but the product at issue in this case is a radiator that prevents motor

vehicles from overheating.

THE COURT: Okay. The statute of limitations issue?

MR. McCONNELL: Yes, Your Honor. As this Court has already applied the analysis that the plausibility standard of 12(b)(6) is quite different than the standard for tolling the statute of limitations. And in this case, just like the previous decision by Your Honor, the truck and equipment plaintiffs were not on notice that there was a -- that the conspiracy had spread to the -- to parts for trucks and equipment until March of 2013, and despite the argument by defense counsel that there is no new information in truck and equipment dealers' amended complaint there's dozen of allegations that include facts that were discovered during proffers.

THE COURT: Okay. But in 2011 you would know about the radiators in the cars and the automobiles, right?

MR. McCONNELL: That's correct. There were a lot of investigations and a lot of guilty pleas and a lot of press releases involving a lot of parts before March of 2013 that involved a lot of parts that are also used in trucks and equipment.

THE COURT: Given your last argument, why would you not then assume it was in cars? That's what you just said before.

MR. McCONNELL: Yes, Your Honor, the truck and equipment --

THE COURT: Why not assume it is in trucks? I'm sorry.

MR. McCONNELL: Because the truck and equipment plaintiffs had no ability to investigate or understand that the conspiracy spread as far as trucks and equipment, that was not clear until the March 2013 press release that the bearings case had actually involved parts that were also sold to equipment manufacturers.

THE COURT: But I don't understand this because you knew -- you knew the radiators were sold to automobiles, and in your first Twombly argument you say they go in automobiles, it would be ridiculous to think if they are fixing the price for automobiles they wouldn't fix the price for trucks and equipment.

MR. McCONNELL: Well, a lot of that information is learned when you look at the overall market conditions and when you discover the proper information on which OEMs were buying radiators from these individual defendants, and that information, which defendants were involved, and the overlap into trucks and equipment parts was not known until March of 2013.

THE COURT: And some of your plaintiffs buy -- some of your plaintiffs buy farm equipment, is that --

MR. McCONNELL: Well, I will address that in the standing argument.

THE COURT: All right. Go ahead on this.

MR. McCONNELL: So as far as standing, Your Honor, the product at issue here, as we discussed already, is radiators, and under the test of Lujan and Fallick in the 6th Circuit we allege that defendants conspired to fix the price of radiators, and that artificially inflated price of radiators caused all of the lines of truck and equipment that were purchased by plaintiffs to be artificially increased and inflated as in direct purchasers. And so regardless of whether or not they bought every single line of truck and equipment in plaintiffs' class definition, that's a question for Rule 23 as this Court has made clear several times that for purposes of Article 3 standing you just need to allege injury in fact, causation and redressibility, and defendants do not seriously contest that the plaintiffs were injured in this case by the inflated price of radiators, they merely say you didn't buy every single line of truck and equipment that meet your class definition, which is a decision for Rule 23.

THE COURT: Why would farm equipment be added to trucks, why would that not be different?

MR. McCONNELL: Well, all radiators are slightly different, Your Honor, but they all provide the same functions to vehicles, they prevent them from overheating

but --

THE COURT: Why not trucks, farm equipment, refrigerators?

MR. McCONNELL: Well, refrigerators aren't vehicles so the definition of truck and equipment dealer class are truck and equipment vehicles, so they are vehicles that have wheels essentially and move, whether it is a backhoe or a crane or a Mack truck or a lawn mower or agricultural equipment or railcars, they are all vehicles that have wheels and can get from one place to another as opposed to a refrigerator, which I'm not familiar with one that has wheels and can move but --

THE COURT: I wasn't familiar whether it had a radiators but go ahead. Standing, let's talk about that.

MR. McCONNELL: Well, I just was addressing the standing argument that if you look at Fallick, which the defendants cite, and there you have a plaintiff that brought suit on ERISA plans because of a general practice within several ERISA plans that he contested. He was not a member of all of those various plans obviously because you can only have one medical benefit plan, but the Court allowed him to sue on the basis of all of those plans because of one particular practice within those plans that were consistent.

And here it is really the same thing, you have radiators that we allege were super competitively priced by

defendants that affected all of the lines of truck and equipment, so because the truck and equipment dealers were injured, in fact, by the super competitively priced radiators and it meets the Lujan test that they were all injured, and then we did decide Rule 23 at a later stage whether the class definition is appropriate.

THE COURT: Okay. Thank you. Brief reply?

MR. SIMMONS: Very brief, Your Honor.

On the facts, not only as I mentioned, did we take issue with this in response to their first complaint they didn't fix it, but it is notable that the truck dealers settled with Denso earlier in this year that included cooperation, which included documents, and they filed the amended complaint here in May and added no factual information even though materials were available to them. That's an interesting juxtaposition to say what the auto dealers' and end payor plaintiffs' complaints look like, so they had access to information, didn't put it, which means presumably they don't have it.

Secondly, you can't just say a radiator is a radiator and anything a radiator goes into should be within their class. I mean, that again is like saying anything that has a processer chip, whether it is a TV or a phone or a laptop, you know, it is one uniform class. These are different products and they sold in different ways to

different people, and their allegation, gee, we had no idea how this market worked, we couldn't figure out. They have been players in this market for years, they have dealerships across the country, and the OEMs have public information out there regarding what they make and what they sell and that's also been out there for years. So this notion that nothing has been available to them and it has all just occurred to them suddenly just don't hold water, Your Honor. Thank you.

THE COURT: Thank you very much.

MR. McCONNELL: Your Honor, just five seconds, if I may? I would just like to direct the Court to the dozens of allegations learned in the proffer in the amended complaint that was information learned after March 2013 that assisted truck and equipment dealers with the radiators' complaint.

THE COURT: Okay. All right. The Court will issue an opinion.

The next motion is the Calsonic North America.

MR. HEMLOCK: Good morning, Your Honor. Adam Hemlock, Weil, Gotshal & Manges, on behalf of the two Calsonic defendants.

There are two motions to dismiss, one on behalf of CKC, that's the Japanese parent entity, they are moving to dismiss for lack of personal jurisdiction, and then CKNA or CK North America is the U.S. subsidiary, and they are moving to dismiss on Twombly grounds.

THE COURT: Okay.

MR. HEMLOCK: With the Court's permission, Your Honor, I would propose to argue both of those motions at once as many of the facts at issue overlap?

THE COURT: That makes sense.

MR. HEMLOCK: Thank you. So, Your Honor, with respect to the motion to dismiss on personal jurisdiction grounds, the complaint should be dismissed for three main reasons.

First, this Court has dismissed seven other complaints with the same operative facts and, indeed, in certain circumstances the facts here are even better than in those other cases.

Second, for all the reasons that Mr. Simmons noted, the complaint lacks the requisite facts, the complaint is filled with general allegations, conclusions, lumped allegations, boilerplate claims but no facts that are required under Twombly to assert personal jurisdiction.

And finally, there are two declarations that were submitted by employees of each of CKNA and CKC, and they are very clear. As to CKC, it is a Japanese company incorporated in Japan with its principal place of business in Japan, it is therefore at home in Japan. It has never manufactured radiators for trucks and equipment in the United States, and it does not control where its customers sell their trucks and

equipment.

As to CKNA, it has never, ever manufactured or sold radiators for trucks and equipment, and it is not controlled day to day by CKC, the corporate formalities have been observed.

For those reasons the complaint should be dismissed, but let me go through those bases in a bit more detail.

THE COURT: Okay.

MR. HEMLOCK: Again, the Court has dismissed seven similar complaints in similar circumstances where there was a foreign company that did not sell the product in question in the U.S. and that is the touchstone.

For example, in Fujikura, which Mr. Simmons mentioned, the key facts are the same. CK never manufactured or sold radiators for trucks and equipment in the U.S., the subsidiary never manufactured or sold them ever, and the cease and desist order from the Japan Fair Trade Commission related only to automobile radiators and did not mention trucks, and let me just focus on that cease and desist order for a moment because the plaintiffs obviously make something of that.

In 2012, over four years ago, the JFTC fined Calsonic, not CKNA but just the Japanese parent, with respect to auto radiators only, no reference to trucks and equipment,

with respect to one OEM, and that was Subaru, which is a part of the Fugi Heavy conglomerate.

Now, the plaintiffs allege that Subaru and Fugi Heavy is one of the automobile OEMs that also make TNE, well, maybe that is true but they don't allege that any of them ever purchased or sold Fugi Heavy trucks or equipment and none of them claim to be an authorized dealer of Fugi Heavy trucks and equipment.

More importantly, at no time has CKC or CKNA ever pled guilty or been charged or indicted in the United States, and I note, Your Honor, that it has been four years since the JFTC's fine and still in the United States no plea and no indictment, and I think that's quite telling as to the plausibility of their claims and whether personal jurisdiction should be asserted here.

And this is in contrast, Your Honor, to the Fujikura case where Fujikura had pled guilty in the United States and nevertheless this Court found that there was no personal jurisdiction. Fujikura also had been fined in Japan.

And it is notable, Your Honor, in the opposition brief from the plaintiffs they make no mention of the Fujikura case, and I understand that because there is no way for them to get around it.

Now, in addition to Fujikura, Schaeffler, Delphi

Korea, Leoni AG, SY Europe, AB SKF and Ichiko all were dismissed on the same ground.

The plaintiffs cite the Showa decision with respect to power steering assemblies, but the meaningful difference there is Showa pled guilty in the United States and, in fact, as part of those papers admitted to having had meetings in the United States. That's obviously a major distinction from our facts and our facts lead to a dismissal on personal jurisdiction grounds.

Second, Your Honor, the key here is facts, not general allegations and conclusions. I won't repeat what Mr. Simmons said, but we support and agree with everything that he said in that regard. Some of their allegations, not facts but allegations, may be true but they don't support personal jurisdiction. For example, they say CKC owns CKNA and CKNA manufactured and sold radiators in the United States. Well, we don't dispute that but that doesn't do anything. They don't allege any of the breaches of corporate formalities that's required for an alter ego theory, none whatsoever, all they say is that there is ownership, so the mere ownership does nothing for them.

Second, this Court held that allegations relating to automobile parts are not probative of whether there is personal jurisdiction with respect to trucks, that's in the Fujikura decision, this Court said an inference favorable to

TED plaintiffs does not arise because Fujikura failed to move for dismissal on the basis of personal jurisdiction in the other component parts cases. The other cases involved automobiles, not trucks and equipment.

And, indeed, I think in certain circumstances, Your Honor, the opposition brief frankly stretches the facts a little bit to the point where they might be misleading. For example, the plaintiffs say CKC admitted that it either directly or through one of its affiliates did business or has done business in the United States. Okay. That's what they claim. Now, what do they use to support that? They use CKC's answer in the ADP case, and what did we say in that answer? We said certain of CKC's affiliates have done some business within certain jurisdictions in the United States. Okay. That says nothing about what CKC has done, it says that CKC's affiliates have done something, but they rely on it to claim that CKC did business in the United States, and I frankly think that's misleading.

Now, with the above in mind let me briefly run through the two tests. General personal jurisdiction, there clearly is none, CKC is not home here.

On specific personnel jurisdiction, we have the three elements from Southern Machinery. First, there is purposeful availment and that requires a substantial connection to the U.S., that the defendant expressly aims its

conduct at the U.S. and the brunt of the harm is felt in the U.S.

THE COURT: The most that CKC would have is that some of its radiators ended up in vehicles here in the United States?

MR. HEMLOCK: Could be but --

THE COURT: They have no control over it --

MR. HEMLOCK: Exactly, Your Honor.

THE COURT: -- is that what you are arguing?

MR. HEMLOCK: Yes. Thank you. And that's set forth in the two declarations that were attached.

They arise from the requirement, requires substantial connection between plaintiffs' claims and in forum activities but clearly there has to be some in forum activities pled before there is a substantial connection, and they don't plead those here. They focus on the ownership of CKNA but, as I said, that doesn't get them anywhere.

Finally, jurisdiction needs to be reasonable. With the above two points I think it is clear jurisdiction would be wholly unreasonable.

Let me briefly address the declarations because the opposition brief makes a point about them. This Court has relied on such declarations in the past. Both in Ichiko and SY Europe this Court dismissed on personal jurisdiction grounds and relied on declarations and did not order

jurisdictional discovery in any auto parts case that we are aware of.

Now, they cite In Re: Cardizem for the point that if there is a conflict between the declarations and something else then you can't rely on declarations, but In Re: Cardizem is just the general denial of jurisdictional facts. Our declarations that we put in are affirmative, they are very clear, they are very concise, exactly what are the reasons why jurisdiction is not warranted in this case, and the plaintiffs' complaint does not offer anything to the contrary.

So let me now turn, Your Honor, to the motion to dismiss for CKNA on Twombly grounds. There is not a single supporting fact pled indicating that CKNA sold radiators to any TED customers and in particular to these TED customers, and that's not surprising because as you see in the declaration CKNA never made or sold these products. They have to allege facts demonstrating that CKNA sold the products, that plaintiffs' class members purchased them with CKNA radiators installed and that CKNA participated in an unlawful agreement. Again, they have had the Ex Para cooperation documents for some time now and they clearly were not able to use any of them to demonstrate that CKNA had any role in a conspiracy at all for that matter regarding trucks and equipment.

Now, the JFTC fine paid by CKC is not relevant again because it was only CKC, it was only Japan, it was only Japanese laws, and it is not something they can rely on. Your Honor said in the MELCO decision, a defendant's conduct relevant to the passenger vehicle conspiracy does not establish the defendant's involvement in the trucks and equipment conspiracy. So CKNA has no involvement in any conspiracy but certainly not in one involving trucks and equipment.

Here, Your Honor, we see some more contortions in their pleadings that we think are a bit misleading. Paragraph 67 of their complaint says truck and equipment OEMs, many of which are large manufacturers such as, and they list a bunch of them, purchased radiators directly from parts suppliers, such as defendants, during the conspiracy period. You see that paragraph very carefully avoids pleading clearly that these plaintiffs bought trucks and equipment with CKNA's radiators in them, and how could they because CKNA never made those products.

This case has been litigated for years, Your Honor, there has been lots of opportunities for these plaintiffs to find some facts, whether in the public record or otherwise, and if you look at the complaint those facts are clearly not in there.

They had an opportunity in their opposition brief,

and if you look, Your Honor, at their opp brief there are two pages where they seem to highlight their greatest hits, what they think are their best shot at demonstrating that this motion should be denied, and if you look closely at each one of those they really fall by the wayside, they are not enough.

Now, our motion we believe should be granted without any supporting facts. We think just looking at the complaint is enough. But if the Court does not agree, then we would ask that it convert it into a motion for summary judgment pursuant to Rule 12(b). Mr. Mike Lane, one of the top executives at CKNA, who has been with the company since 1985, has stated under oath that CKNA never made these products.

Plaintiffs claim three things, that that declaration is not comprehensive, it is vague, and it is untested. First of all, the declaration is exactly what their complaint should be, direct and to the point, it is not remotely vague, it says very clearly we have never made or sold these products. There is no other way to say that as succinct as that. We don't need pages and pages of extraneous material to try to make our point, which is what the trucks and equipment plaintiffs' complaint does. Frankly, the longer the complaint the more you wonder whether it should satisfy Twombly because if they really had the

facts to assert their claim they would put it right up front and they would make it short and succinct.

Second, it is completely comprehensive. Nothing more can be said on point about whether they make this product.

And, third, there is nothing to test. It is a declaration under oath that plaintiffs have put forward no facts to the contrary.

In the MELCO case this Court said the collective acts cannot be attributed to MELCO defendants given the lack of a plausible allegation that MELCO even competed in the trucks and equipment market, and that principle applies here, Your Honor.

Now, the plaintiffs say they deserve full discovery, and they put in a declaration from Mr. Parks with a really big list of what they want. You know what this list looks like? It looks like a request for documents that we would get at the start of an antitrust case. They want to litigate the whole case on this one specific issue, and that is not appropriate, it is very clear we deserve summary judgment just based on the papers or if you admit that declaration that the declaration should be sufficient.

That's all I have. Thank you.

THE COURT: Thank you. Response?

MR. McCONNELL: Hello again, Your Honor.

Shawn McConnell from Duane Morris on behalf of the truck and equipment plaintiffs.

First, with respect to --

THE COURT: What did CKC do here in the United States?

MR. McCONNELL: Well, plaintiffs allege that CKC is a Japanese company that targets its business to North America and China and other places around the world, and --

THE COURT: But how does it do that?

MR. McCONNELL: It does it through the sale of radiators and other parts.

THE COURT: Do they sell radiators here in the United States?

MR. McCONNELL: Yes.

THE COURT: How, through whom?

MR. McCONNELL: I believe through CKNA, its subsidiary.

THE COURT: It manufactures them in Japan, and you are saying sends them to CKNA here, not in vehicles but just --

MR. McCONNELL: Well, at this time, Your Honor, it would be foolish of me to say that I know how CKNA's business works at the pleading stage, but what we allege is that CKC targets the United States and for purposeful availment the question is the context with the forum state by CKC, not with

the individual plaintiffs, or whether or not the radiators from truck and equipment specifically got to plaintiff truck dealers, which we will argue that they knew that they would end up in the United States. But for purposeful availment the test is whether CKC itself as a company targeted the United States, and not whether these specific products ended up in the United States. The test is not looking from the plaintiffs' perspective but for the defendants' contacts with the forum. We allege in our complaint that CKC targeted the United States, does business in the United States, for radiators and other products, and we think that's sufficient for --

THE COURT: But what I want to make sure is you are saying for radiators and other products, but right now talking about radiators, you are saying that CKC, as you allege in your complaint -- or you allege in your complaint, that they targeted the United States for radiators, not as for CKC sold its radiators in Japan --

MR. McCONNELL: Well, that would be --

THE COURT: -- put into vehicles which were then sent to the United States?

MR. McCONNELL: Yes, Your Honor. That would be under the arise to or relate to causation element of the specific personal jurisdiction test that as part of the RFP or RFQ process in Japan CKC, even though they declare in

their declaration from the CKC employee that they did not control where the radiators for truck and equipment ended up, they had knowledge of where they would end up and they knew that those -- this is an indirect purchaser case so regardless they admit that they sold radiators, they pled guilty to fixing the price of radiators in Japan, and they sold radiators for truck and equipment in Japan, and we allege that through the RFQ process and RFP process that they knew that those products would ultimately end up in the United States.

And as far as reasonableness, the third factor for specific personal jurisdiction, you know, as defendants point out for radiators for automobiles CKC is before this Court and they sell -- they admit in their answer that they sell radiators for automobiles in the United States, so it would not be unreasonable given their context with the forum for them to be --

THE COURT: You mean CKNA?

MR. McCONNELL: CKC, Your Honor.

THE COURT: CKC admits that they sold radiators -- I'm sorry. I missed what you just said.

MR. McCONNELL: CKC is a defendant in the radiators case for automobiles before Your Honor.

THE COURT: Right.

MR. McCONNELL: So they have already -- they are

already before the Court because they have sold radiators for automobiles so they are before this Court, this Court has jurisdiction, so as far as whether it would be reasonable whether they would foresee that they would be hailed into this forum, it is entirely reasonable given their involvement in radiators for automobiles in this case.

Next -- well, just really quickly on the personal jurisdiction issue. Defendants, you know, cite Fujikura but it is important to note for the record that Fujikura was a case where there had already been six months of discovery produced by all defendants including Fujikura itself. There were millions of pages of documents, transactional data, discovery responses, interrogatories, and there was an opportunity in Fujikura for truck and equipment plaintiffs to modify their complaint based on the information learned from discovery in that case.

Here discovery hasn't gotten off the ground yet, and so even though they provide -- defendants provide declarations we have not been able to test those declarations, we have not been able to determine the veracity of those declarations. And in Fujikura the declarations, including a VP of sales and marketing and a VP of finance and accounting, where here you have an attorney or legal staffer and somebody involved in HR so it is unclear how they would know whether the radiators that were involved in sales to

truck and equipment dealers in Japan would end up in the United States, so I think that's an important distinction for giving plaintiffs limited jurisdictional discovery if the Court wishes to do so because they have not yet had the opportunity.

THE COURT: Okay.

MR. McCONNELL: With respect to defendant CKNA's Twombly argument, they focus mostly on the MELCO decision, the Mitsubishi MEC case, but it is important to distinguish that case, that's not the same operative facts as in this complaint.

As Your Honor knows in the MEC decision, MEC sold one type of wire harness, a body unit, to Fugi Heavy Industries, which is an OEM that does deal in both automobiles and trucks and equipment, but there was no allegation that MEC sold that wire harness to trucks and equipment, just that it sold to Fugi. And the only guilty pleas with respect to MEC in that case were with respect to alternators and starters and I believe maybe ignition coils, so they did not at all relate to wire harnesses. So the Court said that you can't loop in wire harnesses for trucks and equipment just because they sell one wire harness, they have never pled guilty to anything that has to do with wire harnesses and they only sold one type of wire harness to an OEM that may or may not have sold trucks and equipment but

you didn't specifically allege that MEC sold wire harnesses to trucks and equipment.

But here in this case we do specifically allege that CKNA has conspired with Mitsuba and T.Rad to fix the prices of radiators sold to trucks and equipment, and we provide dozen of examples of the types of OEMs that CKNA has sold to that include OEMs that sell specifically to truck and equipment dealers rather than both automobile dealers -- automobiles and trucks and equipment, so it is easily distinguishable --

THE COURT: Wait a minute. That CKNA sold to?

MR. McCONNELL: Yes.

THE COURT: Got it.

MR. McCONNELL: We make several factual allegations in our complaint that specific defendants --

THE COURT: Right.

MR. McCONNELL: Now in both the first motion Your Honor heard and in this last motion, you know, we hear that well, there's just defendant groups generally or cherry-picking individual allegations but there are dozens of allegations naming each individual defendant, their role in meeting together, their opportunity to meet together, their guilty pleas which all affected radiators, the relationship between the radiators for automobiles and the market conditions that made them relate to radiators for trucks and

equipment and the opportunity to collude and the sales that these defendants made to OEMs that sold to trucks and equipment.

So we think that there are several factual allegations, they are much more detailed when you look at the complaint as a whole and the market conditions and the fact that these three entities at issue in this case are the predominant sellers of radiators for automobiles and trucks and equipment. And if they were fixing prices for automobiles this Court has held that just because the guilty pleas are only specific to automobiles does not mean that that limits it and that forecloses the boundaries of the guilty pleas of the conspiracy, that it would make sense that it would extend to trucks and equipment.

THE COURT: It is plausible.

MR. McCONNELL: It adds the inference of plausibility, yes, Your Honor, with -- these are the same facts that the Court has found sufficient for bearings and wire harness cases.

And just to follow up on the Rule 56(d) motion for defendants' declaration, again, they rely on Fujikura, which the Court did not afford the opportunity to take limited jurisdictional discovery or any discovery to contest the declarations and convert it to a Rule 56 motion but, again, unlike Fujikura, plaintiffs have not had any discovery at

this point, there has been no interrogatories responses, no documents, no transactional data, we are not in a position -- we haven't had six months to parse through information to the benefit of truck and equipment dealers to convert this to a Rule 56 motion.

And we just think that it is unclear, given two declarations that have not been impeached by someone in the legal department and someone in HR, whereas we specifically allege that two employees worked for both CKNA and CKC by name in our complaint but neither of those two employees provided declarations in this case, but we have a declaration from a legal staffer and from an HR person that we would like to test the veracity of those declarations and get limited discovery if the Court so chooses to convert this to a Rule 56(d) motion.

THE COURT: Okay. Thank you.

MR. HEMLOCK: Briefly, Your Honor?

THE COURT: Yes, brief reply.

MR. HEMLOCK: Just a few quick points. First of all, in the Ichiko decision, Your Honor said merely placing product into the stream of commerce without more is not a purposeful act directed at the forum. They allege that there was direction but they allege no facts, and that's something that they said many times, counsel said allege, allege, allege. It is easy to allege but you need something beyond.

They point out MELCO, in MELCO he mentioned that there was a plea. We have no plea in the United States with respect to either of these two defendants, so the MELCO case is even stronger for us than it was for MELCO itself.

Counsel points out that the U.S. declarant was an HR representative. He is, I will tell the Court, one of the top executives at CKNA. He has been there since 1985, he's involved in all aspects of the business, and he conducted, of course, appropriate diligence before putting in that declaration.

Finally, with respect to Fujikura and six months of discovery, the point of Fujikura, Your Honor, is not that after six months of discovery this Court was able to determine whether there was personal jurisdiction. It is that that Court held the principles regarding when personal jurisdiction is appropriate. The fact that there was discovery is frankly irrelevant to the holding of that case, and the same principles, the same theories apply in this case, so jurisdiction is not warranted here and the fact that there has been no discovery should not matter at all. Thank you.

THE COURT: Okay. Thank you. I think we are up to 6-B, which is the defendants' collective motion to dismiss end payor plaintiffs.

MR. LOVE: Good morning, Your Honor. Brad Love of

Barnes & Thornburg representing the KYB defendants. You will notice it is a rather barren defense side in this case. We are the only defendant group in the shock absorbers action.

I'm going to try to be as brief as possible since I think this is the last thing on the agenda. Our motion -- the state law claims have been resolved on the collective motion to dismiss, you entered the stipulation recently addressing those issues, so all that remains are the Twombly and standing arguments that we have raised in our motion, and those certainly overlap. The key issue that we believe distinguishes this case from other motions to dismiss in the auto parts case is that there are no allegations of a conspiracy or even sales involving U.S. OEMs or European OEMs or anything other than six Japanese OEMs.

If you look at plaintiffs -- both the auto dealer plaintiffs' and the end payor plaintiffs' complaints against the KYB defendants, you will see no mention of GM, no mention of Ford, no mention of Chrysler, these are only complaints that mention the six Japanese OEMs that were also mentioned in KYB's plea agreement with the Department of Justice, those are Honda, Subaru, Toyota, Kawasaki, Nissan and Suzuki, and that really especially in the case where there are no other named defendants, no allegations of sales to other OEMs, that impacts directly the plausibility of plaintiffs' claims in this case.

The main issue we want to focus on is the fact that they haven't alleged that they purchased even the brands of cars that are allegedly impacted here. They allege they purchased shock absorbers indirectly, the ADPs allege they purchased automotive parts but we will assume, as they suggested, that was meant to reference shock absorbers, but the bottom line is neither allege that they purchased the brands of automobiles at issue. In fact, 14 of the ADPs actually specifically allege that they were not authorized to purchase new vehicles from any of those six OEMs to which they say we are impacted by the conspiracy or where there are any allegations that KYB sold them shock absorbers.

The issue is heightened in this case, and I think another key distinction from the prior motions that we would want to focus your attention on especially in light of plaintiffs' opposition brief is the Court's order regarding the plausibility of an industry-wide conspiracy earlier this year in response to plaintiffs' motion to amend and consolidate 18 different part cases involving Denso and other defendants. Obviously KYB was not involved in that, KYB only sells shock absorbers, that's all the allegations are in the complaint, that's all that could be in the complaint, and the Court in that April order addressed the plausibility of the industry-wide conspiracy allegations.

There aren't really industry-wide allegations of

conspiracy in plaintiffs' complaints against KYB. However, they rely on the fact that there are allegations of industry-wide conspiracy in their opposition to suggest that even if KYB or other defendants that are alleged to have conspired with KYB didn't sell to non-Japanese OEMs you could infer such sales from allegations of an industry-wide conspiracy. We would say certainly that's not the case where KYB only sold shock absorbers, and we would also say that your Court's -- that Your Honor's ruling in April --

THE COURT: Only sold the shock absorbers to whom?

MR. LOVE: Only sold shock absorbers to the six OEMs that have been identified in the complaint. The only allegation is that KYB sold shock absorbers to Subaru, Honda, Kawasaki, Nissan, Suzuki and Toyota.

THE COURT: All the Japanese companies in Japan?

MR. LOVE: All the Japanese companies, either the U.S. subsidiaries or in Japan, but certainly not to U.S. automakers like GM, Chrysler, Ford or European automakers, those just aren't at issue in plaintiffs' complaint and they aren't at issue in the conspiracy that has been claimed here.

And then as far as the industry-wide contact, in your order you said that even where there are allegations of communications between defendants selling different parts and defendants that sold multiple parts, which isn't the case here, those allegations of an industry-wide conspiracy, a

multi-part mega conspiracy were implausible, and that bears on the rationale that plaintiffs seek to have the Court adopt in denying this motion to dismiss, which is we don't have to allege specific purchases of brands of cars to which KYB or other defendants sold shock absorbers, we just have to allege that there is this big overarching conspiracy and that should be sufficient.

We would say certainly under Twombly those are not specific factual allegations that are found anywhere in their complaint, and that would not be sufficient to show that the auto dealer plaintiffs or the end payor plaintiffs here actually purchased vehicles that were impacted by the conspiracy or contains shock absorbers manufactured or sold by the KYB defendants.

I mentioned the auto dealer plaintiffs allege they do not sell the brands of cars at issue here. In some cases some do allege they sold the brands of cars at issue. The end payor plaintiffs don't even allege, I think as in prior cases, what brands of automobiles they purchased, that's after obviously a significant amount of time here for these plaintiffs to have identified what purchases are at issue to support their claims.

And the other issue that I think distinguishes this case is there is no allegation that KYB dominated the market or controlled all the market or that other defendants with

whom KYB conspired controlled the market. I think there is an allegation that KYB had a roughly 20 percent market share, that's certainly not sufficient for a factual inference that every automobile purchased by the auto dealer plaintiffs or the end payor plaintiffs would have been impacted, especially when they do not allege the brand of automobiles that are at issue.

I would say that we point to specific authority in our brief that at the pleading stage plaintiffs are required to specifically allege that they purchased products impacted by the conspiracy, we would say in this case those are specific brands of vehicles or vehicles that are likely to have contained shock absorbers sold by the defendants or alleged co-conspirators.

Here the only brands that have been identified are by the ADPs, some do, some don't, and certainly the EPPs claim they don't have to allege anything we think is clearly contradicted by the Magnesium Oxide decision from the District of New Jersey that we cite, and the Apple iPhone litigation for the Northern District of California, both of which say plaintiffs must identify the specific products they purchased and that those products were impacted by the conspiracy when they are asserting these sorts of indirect claims.

This Court noted in the occupant safety systems

case that plaintiffs there did allege the specific brands of cars that they purchased, and that those brands were the same brands, same OEMs to whom the defendants in that case sold the occupant safety systems. Here there are no such allegations, and I will note that plaintiffs rely it appears on the Optical Disk Drive case out of the Northern District of California for the claim that they don't have to identify that link between KYB sales to Japanese OEMs and their purchases of GMs or Fords or Chryslers. We would say that that's clearly not addressed in that case, it does not address the pleading standard for indirect purchases under Twombly, and it certainly doesn't say that they don't have to plausibly allege that there is some link between these U.S. automobile purchases and the alleged Japanese OEM sales at issue.

The last point I will make is in plaintiffs' opposition they identify some new claims that appear nowhere in their complaint.

THE COURT: To modify their complaint, is that --

MR. LOVE: Yeah, they are not permitted to do that, that is our position. We cite obviously the 6th Circuit authority on that, and we haven't seen a motion to amend or a new complaint. Auto dealer plaintiffs suggest that they might seek leave to amend, it is unclear what the end payor plaintiffs wish to do. We would note that both of those new

claims don't really alter the analysis even if they were accepted, but obviously we don't believe that you can amend your complaint on an opposition to a motion to dismiss.

THE COURT: Good try though.

MR. LOVE: Thank you.

THE COURT: Response?

MR. OCHOA: Good afternoon, Your Honor. Omar Ochoa on behalf of the end payor plaintiffs and the auto dealer plaintiffs as well. Ms. Evelyn Li might come up and say a few words on behalf of the auto dealers as well in case I mess up along the way.

THE COURT: You won't, don't worry about it.

MR. OCHOA: Thanks. This shock absorber's case is the 33rd case in this MDL as noted in the lead case number. And with respect to the framework of the allegations in the end payors' complaint and the auto dealers' complaint, these complaints are not substantially different from the 32 complaints that have preceded it. The complaints arose from a broader criminal investigation into price fixing and bid rigging in the auto parts industry. The named defendant, KYB, pled guilty and agreed to pay a $62 million fine for its participation in the conspiracy.

Footnote six in our response brief, Your Honor, cites many of the cases where this Court denied the same arguments made today. Defendants' motion and their reply

particularly attempt to finely parse some of the words and phrases in the complaints to create perceived differences in this complaint versus the others. I'm happy to address any of those particular parsings if the Court is interested, but otherwise I intend to really just point out for the Court that the arguments raised by the defendants today are not unique and they are very similar to the arguments that have been previously dismissed by this Court.

There's a few arguments that I would like to touch on, Your Honor?

THE COURT: You may.

MR. OCHOA: The first is that the defendants cannot simply limit the complaints to the OEMs that were identified in the complaints. Those OEMs that were identified were simply listed because those were the OEMs that were included in KYB's guilty plea, they were not intended to limit the scope of the conspiracy and Your Honor has previously ruled in the past already that OEMs included in these guilty pleas do not alter or limit the scope of the conspiracy.

THE COURT: I think I ruled also you can't be limited by the plea -- the scope can't be limited by the plea.

MR. OCHOA: Yes.

THE COURT: Not only as to the OEMs.

MR. OCHOA: That's right, Your Honor, and again we

cite cases for that in our brief. There's also this notion that the plaintiffs are required to plead the specific vehicles that they purchased, but that's also simply not true and has already has been dismissed by this Court in the HID Ballast case.

The product at issue is shock absorbers, and it was expressly pleaded by the plaintiffs here that they purchased vehicles containing these shock absorbers that were affected by the conspiracy. The plaintiffs again allege a broad conspiracy that affected the entire shock absorbers' market, and these allegations are in line with again the complaints that have already been approved in the past by the Court.

There was at the end a mention that there were additional or new allegations in our response brief. We do not agree with that reading of our response brief.

THE COURT: You are not moving to amend your complaint?

MR. OCHOA: No, we are not, we are not doing that today, Your Honor. We don't add any new allegations, we simply stand on the allegations that were presented in the complaints, and ask that Your Honor review those because those have been approved by this Court repeatedly in the past.

THE COURT: Okay. Thank you.

MR. LOVE: Just briefly, Your Honor.

THE COURT: Response.

MR. LOVE: A couple points that I want to briefly address, Your Honor.

The plaintiffs said we finely parsed the pleadings, and as was suggested, please do look at the complaint, there are no other OEMs mentioned with respect to shock absorbers beside the six that we identified.

THE COURT: But you do agree those six were the ones mentioned, I think you even said that in your argument.

MR. LOVE: Yes, those were the ones mentioned in the complaint and those were the ones mentioned in the plea, and that's why the argument that they could have pled something beyond the guilty plea in this case is really a red herring, there is no allegations beyond the guilty plea here. So whether they could have done it or not doesn't matter, they didn't do it, they should be limited to what they actually allege in their complaint, and certainly we are glad to hear they aren't seeking to have the allegations in their opposition incorporated into it. Thank you very much.

THE COURT: Thank you. All right. The Court will issue an opinion on these motions. I think that's it for this part of the case. We do have a fairness hearing I think coming up at 1:30. Okay. Anything else?

MR. FINK: Your Honor, I'm sorry, there is one other matter. Mr. Cherry is working with us on this, on the

motion for summary judgment, the Court -- that we talked about earlier that was filed on Monday, we are having -- we are not able to agree on a briefing issue so I will stand aside and let Mr. Spector sound more professional.

MR. SPECTOR: Impossible. Your Honor --

THE COURT: Mr. Spector.

MR. SPECTOR: -- we have been offered a month in terms of response time. That is, under the circumstance, not enough. We are going to have to in response to this very simple motion, that happens to be dispositive, respond and establish evidence that we have of the overall conspiracy that we have alleged because, as I understand the motion, it is our failure to prove that that is the basis for the motion. That's going to take us going through the materials that we were going through for class certification on a schedule that instead of being due on March 3rd would now be due sometime before March 3rd.

Mr. Cherry would like it to be due December 14th. We would like it to be due, taking into account that it really disrupts the schedule that we had in place and the manner in which we were proceeding on that basis in terms of factual analysis and putting that into coherent presentation. We would like to have at least until January 14th for that purpose -- or January 16th, I think the 14th I believe is a Saturday, so the 16th is a Monday, to give us an opportunity

to get through those facts and put them together coherently. It is going to be the same things that we have to do for summary judgment, it is almost like two bites at the same apple, but that's why we ask for that amount of time, Your Honor.

MR. CHERRY: Your Honor, if I may respond? The motion, again, it is 11 or 12 pages, it is what is the evidence as to Denso. And they have had our documents, almost all of them, for four years, they have had the additional documents for over a year, they have completed depositions. Every deposition was about the same thing over and over again, Denso sales of body ECUs to either of two OEMs, that was it, that's all the evidence as to Denso.

And at this point we are entitled to summary judgment. There are no facts linking Denso to any 13 part conspiracy, linking to any part purchased by any direct purchaser plaintiff, and discovery is now long since closed and it is time to deal with this and get wire harnesses off of the docket. And they don't need two months -- they have already responded to our request for admission. We served request for admission. Do you have any evidence -- do you admit or deny that you have evidence that Denso conspired on wire harnesses? They admitted no evidence. On relay boxes they admitted no evidence, on down the line except for body ECUs. There is no need to deal with all of this.

THE COURT: Okay.

MS. SPECTOR: If I may, Your Honor?

THE COURT: Briefly.

MS. SPECTOR: Just very briefly. The question is not what is the evidence against Denso alone, the question is what is the evidence of an overall conspiracy with regard to wire harness products, and that involves the analysis of not just Denso's dockets and depositions but the analysis of the documents and depositions of all of the defendants.

THE COURT: Okay.

MR. SPECTOR: All 11 of them.

MR. CHERRY: Again, it only matters --

THE COURT: All right. Enough, enough.

MR. CHERRY: -- it is our motion.

THE COURT: You may have until January 16th.

MR. SPECTOR: Thank you, Your Honor.

THE COURT: It is a dispositive motion, if you are granted you are done, it will probably because of your time to respond -- to reply, excuse me, won't be done for that hearing in January, but as I indicated before, you can request in your motion that it be set specifically at another time and we can do it at another hearing.

MR. CHERRY: That's fine. I assume we'll be able to agree on a date for reply but otherwise --

MR. SPECTOR: I assume.

MR. CHERRY: We will request a hearing, Your Honor.

MR. SPECTOR: Thank you, Your Honor.

THE COURT: Now, before everybody leaves is there anything else?

(No response.)

THE COURT: All right. I wish you all happy Thanksgiving, have a good healthy time.

THE LAW CLERK: All rise. Court is in recess.

(Proceedings adjourned at 12:23 p.m.)

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(At 1:49 p.m. Court reconvenes, Court and counsel present.)

THE LAW CLERK: Please rise.

The United States District Court for the Eastern District of Michigan is again in session, the Honorable Marianne O. Battani presiding.

You may be seated.

THE COURT: Good afternoon. Sorry to keep you waiting. Okay.

MR. RAITER: Good afternoon, Your Honor. Shawn Raiter for the auto dealers.

As you know, we are here on the auto dealers' motion for final approval of a collection of settlements. We also essentially have three main issues or motions. The first is the final approval of the settlements.

THE COURT: Let's do that first, and we can get to the others.

MR. RAITER: And along with that, the plans of allocation that we submitted with that brief, and then we've got attorney fees and costs, and then we have this separate motion that we made to set aside a potential of funds for potential future service awards, so we are not asking for any service awards or incentive awards out of this round of settlements, we made a separate motion asking for leave to allow us to set some money aside for a future round of potential requests for those awards, so I will get to that on its merits.

The final approval of the settlements, Your Honor, you have been through this a number of times, I don't think we need to go through all of the factors and the subfactors for Rule 23 settlement or settlements in this case. Here we have ten defendant groups that have reached settlements with the auto dealers, it represents 28 different parts, 37 different settlement classes, approximate value -- monetary value of $125 million, it is $124 million and some change. These, like the first round of auto dealer settlements, are no reversion, lump sum settlements, they come with substantial cooperation from each of the settling defendant groups, that brings the total number of dollars in auto dealer settlements to approximately $184 million.

So we carried out the notice plan that the Court granted leave for us to carry out. We used Gilardi & Company, again, which you had approved as the notice consultant and notice provider. We followed pretty much the same notice plan as we did in the first group of settlements. We direct mailed notices to those dealerships for which we had what we believe to be addresses, and that was about 15,000 dealerships, about 100,000 e-mails were sent to e-mail addresses associated with new car dealerships in the included states, which would be the indirect purchaser states and the District of Columbia.

There were various online notice efforts through things like Facebook, Twitter, and then also publications in various auto industry or auto dealership publications. The notice consultant indicates that in their opinion the notice reached approximately 95 percent of the new car dealerships potentially eligible in the included states. The defendants on their own submit their CAFA notice, which is the notice to the state and federal agencies or authorities, of the settlement and they do that and are sure -- they have an incentive to do that because we want the release that comes with having properly done that.

As I will talk about in a minute here, there was an issue about supplementation of some of these notices for some of these defendants, and out of an abundance of caution we

want to time your final approval or the effectiveness of the final approval to 90 days from the date of those supplementations, and the proposed order that we provided to you accounts for that, so we can talk about that when we get into the merits of this, but all of the defendants have provided the CAFA notice and the clock is either ticking or has already run on the 90-day period for some of them.

So the next thing you look at, of course, in a settlement like this is assuming that you find that the notice was adequate and met Rule 23 Constitutional requirements is the class member reaction. We are fortunate again to have no objections to these settlements. We did not get a request to appear at these -- or at this final fairness hearing. We have not received any comments about the merits of the settlements or any of the requests that we have made for attorney fees, for the incentive award set aside, for reimbursement of cost and disbursements. No one commented about the merits of the settlement, no one commented about the CAFA notice or the Rule 23 notice process.

THE COURT: We had some opt outs though.

MR. RAITER: We did have some opt outs and before we go there I want to remind the Court, and I don't think you need to be reminded too much, but our class of clients or class members are all represented by counsel, many of them have in-house counsel, some of them are publicly traded

companies with an in-house general counsel office with multiple lawyers, but every new car dealership that we have ever been in contact with has attorneys who do their work on a day-to-day basis. So when we look at the fact that we don't have any objections we think it is remarkable, we think it speaks very highly of the terms of the settlements, the work that we've done, and the reasonableness of the settlements themselves and of the requests that we have been making for reimbursement of fees or expenses.

We did have opt outs this time, the first of which was the group that opted out of the first round of auto dealer settlements, Group One Automotive, they had initially opted out in the first round but then they elected to opt back in by the time we were in front of you for final fairness.

THE COURT: One of them had several hundred dealerships.

MR. RAITER: Collectively there was four groups that had opted out in this round, they are all represented by the same three law firms. What happens here, Your Honor, is they get solicited in antitrust settlements, and this is not a unique situation. If you were to go to some of the web sites of these law firms they say that they specialize in representing opt-out clients in antitrust and securities and other litigation.

THE COURT: Tell me in real life what that means. I mean, they preserve their right to get a greater share of the pot, is that basically --

MR. RAITER: They preserve their right -- they believe they are going to do better by opting out and asserting their own claims against these defendants, and they are going to make more money in doing so. As class counsel who has been involved in this litigation for dealerships for five years, having been on the receiving end of much of the discovery of some of these folks sitting here in the jury box, we don't think that that is very likely, we think it is not a good idea for them to opt out, but that's the play if that is what they are doing.

Now, there are those opt outs in any class action settlement that are essentially conscientious objectors, they just say I don't want to be any part of this, I don't want to make a claim, I don't believe in this, blah, blah, blah, I want out. We don't have any reason to know or not know whether any of these dealerships are in that category, but we do know that the four major groups that opted out with the total of about as many as 269 locations in the included states or maybe just under 200, depending on how you look at it, some of them, for example, their name says so and so collision center, doesn't sound like a new car dealership to us. Some of them are again in the name use the word used

dealerships or used cars, probably not a class member, but nonetheless they have their name on a list wanting to opt out.

THE COURT: But let's just say some did it because they wanted more money and they are a legitimate business.

MR. RAITER: Uh-huh.

THE COURT: I'm just curious because the defendants have settled and I'm assuming they settled hoping they would take care of everything and now have these opt outs, so what happens, do they have separate cases? I have never followed -- I haven't had a class where I have had opt outs.

MR. RAITER: So they may well bring another case themselves, they may well approach these defense lawyers to say we have these claims and we represent these dealerships and we want to negotiate with you and negotiate some other deal. In many class settlements you have what people call a blow provision or a provision that allows the settlements to be voided if a certain number of the class members opt out, so if more than X percent opt out the settlement at the defendants' election usually can be voided. I have never seen a settlement voided even when the opt out number has been exceeded so usually, and the defense lawyers can speak for themselves, there is some expectation that you may have to deal with some number of opt outs.

Our settlements here that are before you right now,

most of them do not have any opt-out provision, some of them have a provision that if more than 10 percent of the class members filed a claim -- excuse me, elected to opt out that they would get a credit back against some of the money that they had paid toward these settlements, but the number here doesn't get anywhere near any of those numbers. So either some of the settlement agreements have nothing on this topic or some have a payback but we don't believe that's going to be triggered in any sense.

So despite that, Your Honor, we estimate that the number of dealership locations that opted out is somewhere one percent or less of the total class members in the included states. Again, there is case law, although we didn't provide it to you in the brief, there is case law where sometimes nearly 50 percent of the class opts out and the Court still finds it to be a fair and reasonable settlement. So this is an issue that -- part of what we want to do, we want everybody in the class, we think it is in their best interest quite frankly for them to remain in the settlement class and to participate because we think we have made a claim process that is easy and efficient, that is repetitive, that once they make their claim they don't have to keep submitting, it should be something that they would be interested in doing.

One of the dealership groups, the Asberry Group, we

spoke with because we have been working with them processing their claims in the first group of dealership settlements, so we have been in contact with many of these dealerships groups and they are processing claims in round one, and that particular dealership indicated well, I'm not quite sure yet what I'm getting in round one so when I see that I may want to participate in round two, I may want to come back in. And given what happened last time when group one realized that they were the only opt out they wanted back in because they realized they couldn't litigate on their own.

We think if one or more of these groups decide to come back into the settlements that the others likely will follow. The proposed order we have submitted to you contemplates that someone could elect to come back into the settlements anytime until the claim deadline or just before the claim deadline in April of 2017, so we have built in the opportunity here for these folks to say I want to change my mind, even after hopefully you have ordered and granted final approval they still will have a chance to come back in.

We are very close to being in a position to actually pay the claims that were submitted in the first group of auto dealer settlements. The only thing that we will be waiting on are the allocation plans we have submitted to you with this motion. So we were still revising some of the allocation plans. The ones that are before you today,

some are new parts that you have never seen an allocation plan on before, some are allocation plans that we have submitted to the Court but which you have not yet ruled on, or some are allocation plans that you did rule on but we have now amended in some way largely reducing the amount of reserve for wire harness. For example, we were holding 40 percent in reserve, we now would only like to hold 20 because we are getting to the end of the proffers, we think we know what the affected models are. And then for some of those that have been amended we have also learned more about the models and the makes and we have a better feel for who really should get what given the information we have received and cooperation.

So once we have that order hopefully, again, I don't want to be presumptuous, but assuming that you grant the approval of those allocation plans the group -- the first group of auto dealer settlements should be going to payment very shortly.

THE COURT: Really?

MR. RAITER: They have calculated, we have been working on the deficiencies, some dealers submit things and they don't submit everything that they need to and you have to go back and say do it within this number of days, do this and do that, and at some point they either do it or they don't, if they don't then they are not going to be paid, but

we are at that point where we are ready to disburse.

THE COURT: How many claims have you basically received roughly?

MR. RAITER: It is more than 3,000. It depends on how you define claims because some dealership groups who may have 20 locations submit one claim.

THE COURT: Okay.

MR. RAITER: Some submit them dealership by dealership, so it is a little bit unclear how many rooftops are in that but it is more than 3,000 claims, which is really quite a remarkable -- it is a high claim rate, it is a high participation rate. Some of these dealerships, remember, while they are going to be eligible class members they are also out of business so if someone did want to bring a claim for a dealership that went out of the business sometime during the class period they could do so, it is just the likelihood of someone doing that is not high, and you are going to see a little lower participation for that reason.

So if you look at the class member reaction we believe again it is very, very positive, it is very strong, that's one of your really main factors here you are looking at, you are looking at the relief provided, the risks and the merits of the claims and the defenses and then the class member reaction really ultimately are your three main focuses. And if we go through all of those I think, like the

first round of settlements that you approved for the auto dealers, these are quite good settlements, they were the result of very hard fought litigation.

I think as you can see from some of the defendants that are here these were some of the defendants who had at one time or another taken the lead in offensive discovery against dealerships, motion practice against the dealerships, so it was hard fought litigation, we think the results are good. It is always a compromise, it is hard to tell here in some sense what the exact damages are without the modeling being done by all the experts quite yet, but we believe based on affected commerce, the particular circumstances of each defendant, whether they pled guilty, whether they didn't plead guilty, where they fall in terms of cooperation, and all of those things play into what fine they paid here play into the calculus that we used to find a reasonable settlement range for each settlement.

As you know, we allocate these by part because in theory each part is a different class, so not in theory that's how we presented them, we believe that each part for each defendant is a different class and we allocate the amounts paid by part again generally based on the amount of affected commerce for that particular part with that particular defendant.

That was what I had prepared to talk about on the

fairness and reasonableness of the settlements. You know the Rule 23 factors. We think these are fair, reasonable and adequate, and we would ask the Court to approve them on their merits for that reason.

THE COURT: All right.

MR. RAITER: If you have questions I'm happy to talk about that.

THE COURT: No. Does anybody have anything else to say before I rule on fairness?

(No response.)

THE COURT: No. Okay. Let me rule on that and then because the next thing you are getting into are the allocations and the fees.

MR. RAITER: Yes.

THE COURT: I don't want to repeat everything you said, but for the record, of course, we are here on the auto dealer plaintiffs' motion for final approval with -- let's see, we had ten groups of defendants, 28 classes -- no.

MR. RAITER: There's 37.

THE COURT: 37 classes. How many parts?

MR. RAITER: 28.

THE COURT: It was 28 parts. Okay. The settling defendants are Denso, Valeo, MELCO, Sumitomo Rico, NSK, Schaeffler, Sumitomo, Omron, Leoni and Furukawa. And the settlement amount is approximately $125 million, a few

dollars less than that. There are no objections. There were the four dealership groups that have been mentioned and opted out. And approximately 99 percent of the dealerships remain in the class.

First of all, there was notice provided to the automotive dealerships. I believe from the pleadings that there were -- all of the states that were involved there were notifications provided for the states, and Gilardi & Company sent notice in the mail to approximately 15,000 potential class members. In addition, there were some 100,000 e-mails sent to addresses associated with automotive dealerships that purchased new vehicles and parts. Finally, there was publication in the Ward's Auto World, Automotive News and Auto Dealer Monthly and digital media. I think it is interesting because from the election we can tell how much the digital and social media has an impact, and that was used in these notices.

No objections have been made to 37 some different settlement classes. And the Court does note and wants to stress that we do know -- I do know, as has been mentioned today, that these dealerships, a lot of them, if not -- well, I know all of those that filed claims but there would be some dealerships who may not have attorneys but I think most of them you said do have attorneys and you have been dealing with attorneys so we know that they have advice on their end,

and no class member is here today and has indicated that they wish to speak. So that was -- that was a very telling prospect.

The Court finds that the settlement is fair, reasonable and adequate. We have put the terms of the settlement on the record. And the Court has to consider a number of factors, and that is looking at the likelihood of success. Well, we know success is never guaranteed. These cases have been vigorously defended but clearly there's a likelihood of success but it is an absolute unknown, so the Court finds that is in favor of the settlement.

Certainly the complexity of this is well known. As with any antitrust case, they are extremely complex, they are expensive, and they go on forever, and this case, of course, we are not at forever yet but we are getting there, it is some four or five years.

The judgment of counsel that the settlement is in the best interest of the class is very significant to the Court, and the Court gives it great weight. As I have indicated in the past, counsel is competent, extremely learned and the Court does depend on it for -- on counsel for their expertise.

The class members, there were some opt outs as expected but the reaction by the members has been overall positive -- has been positive. There were no objections.

These negotiations were done at arm's length, all the respective parties being represented. It is certainly in the public interest to settle complex litigation such as this.

So the Court needs to then go on with the proper -- was the notice proper, and I think I referred to that already as to what was done to the notice -- for the notice, and I think it, of course, is appropriate and sufficient.

The settlement class should be certified pursuant to Rule 23 for purposes of effectuating the settlement certainly. Now, there are a lot of settlement classes in this particular case but they all bear the factors that are required under Rule 23 and satisfy the same. There is certainly numerosity where the numbers would be impractical to do it individually. We know the number of notices that were sent out in the number of entities being -- did we say over 1,500 dealerships at one point or 2,500, something like that?

MR. RAITER: 15,000.

THE COURT: 15,000.

MR. RAITER: But probably more than that.

THE COURT: Okay. Certainly there is a question of law or fact common to this class. It arises out of the same operative facts involving conspiracy. The typicality is there. The claims of the representative parties are typical of the claims of the class. The adequacy of representation,

the Court has already referenced the attorneys being very learned in this and the class was well represented by counsel and, in addition, the individual plaintiff representatives adequately protect -- adequately represented the class.

The Court then turns to the provisions of Rule 23 after doing this, 23(a), the 23(b)(3) that the class plaintiffs, as I have just indicated, demonstrate the common questions predominate over questions affecting only individual class members. The class involves this global conspiracy from which the proposed settlement class members' injuries arise. The single conspiracy theory suggests the existence of issues relative to the scope of the conspiracy, the market impact, the aggregate amount of damages as a result of the antitrust violations. Evidence shows that a violation as to one settlement class member is common to the class and will provide the violation to all.

Finally, a class action is a superior method to adjudicate these claims that have been centralized here in this Court. So the Court does then appoint the settlement class and -- the class counsel, excuse me, and the class representatives. I believe that's the entirety of it at this point, we haven't talked about the plan of allocation.

MR. RAITER: Thank you, Your Honor. As I indicated, the order that we have proposed to you, the omnibus order, has self-effectuating timing of the ruling as

to certain of the defendants so that we are absolutely sure that the 90-day CAFA period has run. So essentially you are saying I find the settlements for those defendants to be fair, reasonable and adequate under the circumstances. However, if we get some kind of an inquiry from a state Attorney General or some other public authority before those 90 days run, you certainly have the ability to consider whatever those entities would have to offer. We don't believe that's going to happen, we don't think it is likely, but just to be sure to make sure that we have complete finality and compliance with the CAFA requirements the proposed order has that built into it.

THE COURT: And then the 90 days would begin, as I understand it, from the date the Court signs the order?

MR. RAITER: No.

THE COURT: Or the date --

MR. RAITER: The 90 days begin to run when they provide the CAFA notice.

THE COURT: I thought that they did that.

MR. RAITER: They did that except some of them supplemented and gave additional information, and so to be confident that that supplementation didn't start a new 90 days running we have put some timing factors in your order to be sure that they have a full 90 days from the date of the last supplementation to be heard. Again, no one has come

forward yet, we don't think they are going to, but just to be absolutely clear that's how the order reads in addition to what Your Honor has just read into the record, and the defendants --

THE COURT: And I have -- let me just say the order -- I thought the order was very well written, it followed the basic outline of what we had before, but it included a lot of detail, I like that, it was very well done. And I would want you to submit -- or I have this proposed order, I don't have what it is on the docket, I want to make sure it is the right order that I enter so --

MR. RAITER: Yes.

THE COURT: -- if you would just submit the order or tell Kay what the number is --

MR. RAITER: We will do.

THE COURT: -- the docket number so I can make sure it is right?

MR. RAITER: We'll do. There was also a question or two -- defense counsel has had the chance to review this and provide some comments. There was a question about whether we had Washington, D.C. in the included states in the actual order that was delivered to the Court, I believe we have double checked that it was, but if for some reason we have a clerical issue or two we will submit that in the new proposed order. I don't believe that we will but -- in fact,

I remember last time I think we had the same issue where we had a case file number that wasn't right and we cleaned up a few things after the hearing, but we will make sure that you have the right order in hand.

The other thing that we did in the first round of auto dealer settlements, and we have done it again here, is that each of the defendants -- or the defendant groups will have their own final judgment so you have this omnibus order that you have in front of you that goes through all the factors and makes the findings and conclusions, but then for each defendant group we had final judgments that again have been negotiated and edited by defense counsel, they have signed off on them. We submitted the first group with this motion, the first group that are eligible under the 90-day rule right now for entry of judgment. Those that have not yet reached the time period, and it is set out in your proposed order, we did not submit those final judgments but we will submit them to you when the 90 days runs for each one of them to be absolutely sure they don't get issued or entered before the 90 days, we don't want to give anybody any arguments that they would not otherwise have. So that's the plan, I think everybody has agreed to that, and if they don't somebody can certainly speak up.

THE COURT: Okay. Assuming this is the plan, I just want to make sure that we don't mess up the plan here,

so I want to have either something in writing saying enter this order on this date, here is the stack of orders and they don't go in until -- or you don't submit them until the date they are --

MR. RAITER: Right, and we thought about that, and that's why we thought we won't submit them that way we don't have you or your staff having to put it on the calendar and figure out did we get it out at the right time. This way it really just can't be issued before, and so we won't give it to you before therefore it can't be entered, so that seems to be the easiest way to handle it. That's just for a handful of the defendants and the other roughly half or so will have those judgments that have already been submitted as part of the proposed order to Your Honor. Again, we will confirm that you've got the right ones.

THE COURT: When you submit it to Kay, in your e-mail make sure that you put down what you just said to me so she doesn't say that has already been entered in that case.

MR. RAITER: Yes, we'll do.

So the next motion, Your Honor, was reimbursement of attorney fees, costs, expenses. Again, we have been through this process before. Because you had previously granted a future litigation fund of approximately $2.9 million we incurred about another $450,000 of

out-of-pocket expenses that would be associated with these settlements, and we seek reimbursement of those.

We also have asked you for leave to set aside eight percent of the gross settlement funds here for a future litigation fund, that's $9.978 million, it is obviously a large amount of money. We have thus far spent approximately $5 million, the auto dealers have, in expenses. We are entering a time in the litigation where the costs will increase exponentially and it is really part of the expert work that needs to be done for class certification -- or that will be done for certification. The economist experts in these cases literally cost millions of dollars to run the modeling, to do their work to form the opinions they need to form in order to support our claims, not only the liability claims but also the fact that these claims could be asserted and maintained on a class-wide basis.

So the request is for eight percent of the gross settlement funds, $9.978 million, again, to be set aside in the litigation funds only to be used for costs related to parts at issue in these settlements. Anything that would be remaining thereafter would go into the claim process; if it turns out that money is not spent it would then be redistributed to the dealerships that have made claims in these settlements, so we have made that request in this motion as well.

We have requested attorney fees as we did last time, we requested these on a common benefit basis. We did so, again, suggesting that you award fees after deducting the cost of notice and administration, which here is approximately $300,000, it is a little less than the first round because we have some efficiency going forward on the claim side of things, and then also after the deduction of the litigation set aside or the litigation fund so that the fees would not come out of the fund or the notice costs.

As we did in the first round of settlements, we proposed to you one-third of what remains after those deductions, that would equate to a fee of $38,299,035. If you go at it a different way and just look at what percentage is that of the gross funds, that would be 30.6 percent of the gross settlement funds. By way of reference, in the first settlement group of the auto dealers the fee award was 31.38 percent of the gross award. Your Honor has raised this fee issue and obviously is paying attention and thinking about it. When you had asked all of the groups previously for input about how to approach fees and what is reasonable and how we do this the auto dealers submitted declarations from Professor Arthur Miller and also former Attorney General Frank Kelly talking about the common benefit approach and whether you should apply a declining percentage as the settlements go up or not, and talks -- our declarations also

talk about the reasonable fee range percentages.

When you make this approach in the 6th Circuit you have got the option to apply a Loadstar crosscheck. We submitted summary records to you for that purpose. You certainly can rely on summary records and we have given you authority for that. The attorneys representing the auto dealers have invested approximately 77,000 hours of attorney time and approximately 11,000 hours of paralegal time. If you apply what would be the usual rates charged by these lawyers, because we have lawyers across the country, some in Washington, D.C., some in other places that are more or less expensive than maybe the normal rates in Michigan, at usual rates our Loadstar on that time would be $48,406,000.

To give you another way to look at it, we recalculated Loadstar using what we call normalized rates, essentially we blended rates of partners, associates, paralegals and of counsel, and if we apply those normalized rates, which at the highest end had a rate of $675 an hour for partners, $375 an hour for associates, $200 an hour for paralegal, $450 an hour for of counsel, the Loadstar using those normalized rates would be $41,136,000. So when you look at the Loadstar multiplier either way what we did is you already granted us approximately $18.5 million for the work we have done from start to finish. The numbers I just gave you are from start to finish of the litigation for the parts

at issue in these settlements.

So we put those two together, so we thought instead of doing this one by one what was our Loadstar multiplier on the first round, what's on the second, we are viewing it as an entire litigation. So the two requested fees, the fee that I just mentioned, the $38 million plus the $18.5 that you have already granted, would total $56,800,000, so that would be for time spent to date -- excuse me, that would be for the group of settlements before you today. If you apply the Loadstar calculus to the two different methods that I just mentioned using normal rates and using normalized rates, at normalized rates that would be a 1.38 multiplier, at customary rates it would be a lower multiplier, 1.17. This is always within Your Honor's discretion.

We have cited case law to you that says the cardinal case, for example, that mentions the normal range of multiplier is 1.3 to 4.5. The Prandin case there was a 3.0 multiplier granted. This Court when you awarded the direct purchasers their first round of fees the multiplier was 2.09. Regardless of how you look at our fee request here, we are well under 2, we are under 1.5 as of the current time.

The time that we submitted to you was through September of 2016, September 1st, 2016. Obviously we continue to work and we have a lot more work to do. We have other settlements coming. What we don't know really is will

our multiplier or our kind of fees go up or will they go down, we don't know at this point. We will certainly be before you again at some point for a fee request but it may be at some point that we start doing more work than the fees -- excuse me, than the settlements are supporting and our multiplier will go down but, again, it is hard to say at this point.

When you look at the fee request, we go back to this idea that we don't have any objection to the fee request. Certainly there are lawyers out there who were paying attention to this and certainly could have commented or dealerships could have commented but they have not because we think it is a reasonable fee request under the circumstances.

Unless you have questions about that I don't have anything else to add on the fee request.

THE COURT: I indicated this morning what I was doing on the fee requests was granting the 20 percent of the common fund after deductions for costs, and I will do the same here as a preliminary attorney fee, it may be the final, I don't know yet where this is going, but I think that you should have the 20 percent to deal with right now.

And in terms of the eight percent for the future litigation fund, I think that's reasonable given the costs of what's going on here.

What was the other, 2.9?

MR. RAITER: 2.9 is what you had awarded as a prior litigation fund.

THE COURT: In the prior case.

MR. RAITER: The out-of-pocket request for this group is approximately $450,000 in costs that were not paid out of that litigation fund because they were newer, separate parts.

THE COURT: And the Court will grant those.

MR. RAITER: Okay. I have one question for you about the interim award and it is probably logistics and probably something we can work out here, but we will need to likely make sure that we have set aside whatever difference there is between the 20 percent you award and the request that we made, and it really is of no consequence until we are ready to pay claims.

THE COURT: Well, that's true, and what about in the first settlement where you say you are almost ready to pay claims?

MR. RAITER: Right, that's almost a year it took us to get there. Now, luckily this second go around it should be much easier because we have claim forms in, we don't have as much work to do, we have -- the claim administrator has the computer program set up to process claims and calculate claims but, again, because this is kind of a pari-mutuel

setting where we are going to need to know what the amount is to actually pay out, there may be a time where if you haven't yet decided what the fee award is, the final fee award, we will certainly let you know that, that we are ready to pay claims, and it seems to me right now at least that the best approach would be for us to be sure we have money set aside such that if we were to get another fee award from you it is sitting there and it is not being used to pay claims or --

THE COURT: When will you start paying claims --

MR. RAITER: For --

THE COURT: -- on the first --

MR. RAITER: For the first group of settlements, from the time you approve those plans of allocation, we hope in less than a month, ballpark of about a month.

THE COURT: Really?

MR. RAITER: Yes. There has been a lot work done, and if you remember the way we set this up and we set it up in the notice for the second group of settlements, we set it up in a way that if a dealership has already submitted a claim that is valid, in other words, they did everything they were supposed to do, they don't have to submit another claim in round two because we have the information about their dealership, we have the information about the vehicles or parts that they acquired during the class periods, and unless they want to supplement that for some reason they can simply

stand on their prior claim submissions, so we hopefully made it easy for them to say yes, just go ahead with round number two.

So once we get round one done, round two should be easier. We will certainly get new claims we expect from new dealerships who did not participate in group one but processing those and getting them through deficiency status and getting them ready to pay should hopefully, knock on wood, take less time than the first round did.

THE COURT: So you are going to pay the first round before you get this round, or you are not going to do --

MR. RAITER: Yes. When you say pay so, I mean, there are really two different groups of settlements, they are freestanding, that first group is nearly ready to pay, and once we get in this process, we have the allocation plans in place, we would be ready to pay. Keep in mind, for some of the parts at issue in this group of settlements we don't have allocation plans yet because we don't have enough information we think for the allocation consultant to develop those plans, so there will be some time but the process is in place, we have most of the dealerships in the system, we have the ability to calculate those claims set up hopefully, but we are still receiving cooperation from some of the settling defendants and that cooperation really often provides the information that is used to allocate within the plans of

allocation but, yes, generally speaking, the first round of settlement payments should be made 30 to 60 days at the most whereas here we will be in a claim process at that point on round number two, we will still be gathering information for allocation plans, but when we are ready to come back to you with the rest of the allocation plans we need for round two we will do that and then be in a position to actually distribute the money.

THE COURT: Okay.

MR. RAITER: So, Your Honor, I believe the only other issue before you is a separate motion that we made, which was to set aside money for potential service awards coming from this group of settlements.

THE COURT: Okay. Before we get into that, I neglected to mention on the attorney fee, you know, we have -- I have a motion pending from --

MR. RAITER: The Barton Law Office.

THE COURT: The Barton law firm. I don't assume Mr. Barton is here, is he?

(No response.)

MR. RAITER: We did not see him.

THE COURT: Yeah, and I said there was no oral argument on it so we will proceed, but my question is you have a plan to distribute attorney fees to everyone including Mr. Barton, I'm assuming?

MR. RAITER: Yes.

THE COURT: Because he is asking for a fee before he has even gotten his allotment, so to speak; is that correct?

MR. RAITER: That is correct. We, of course, have a little different view on what he's asking for. However, when you awarded the first round of fees, lead counsel, as is commonly done in litigation like this, allocates the fees amongst the lawyers who did the work that generated the fees. There is always discretion and judgment within that process about who did what, what was reasonable, what was valuable to the litigation.

THE COURT: I understand that, and I don't want to get into argument on that motion because he's not here.

MR. RAITER: So we planned to follow the same approach here for round two, and until we had a fee award part of us on our side said we are not even sure what the fee award is so I'm not sure how we can analyze what you are asking for. We have an agreement with Mr. Barton's law office that we believe controls what his fee would be. He is asking for more based on additional work that he claims that he did. We certainly intend to in good faith work that out and hopefully come to a resolution, but he filed --

THE COURT: How many other attorneys do you have that are working on these parts?

MR. RAITER: Our group is not nearly as large as the end payors and even the directs. If you look at firms that have relationships with some of these dealerships, so they are essentially -- they are dealerships' personal counsel, they would be referring counsel if you look at it as a personal injury setting, so a couple dozen total but this is the only one we have this kind of an issue with right now, and we hope to deal with it and hopefully it won't be before you in any sense.

THE COURT: Okay.

MR. RAITER: But it is not like we are telling him you don't get a fee or you don't get anything, it will be something that we will use our best judgment on.

THE COURT: Well, I have indicated to him -- or my staff has because he called to be on the agenda and we said no, and the Court will deal with it by way of responding in writing as to whether or not he can file the motion which has, in fact, already been filed.

MR. RAITER: Yeah, and we didn't respond to the merits, as you know, substantively we have not responded. So if Your Honor allows the motion we would want a chance to be heard on it. The concern we have is it is a slippery slope of --

THE COURT: Yeah, don't go there, no, we are not going there.

MR. RAITER: Thank you. So the last point, Your Honor, is this set aside for potential future service awards. This is a large group of settlements and quite a bit of money, and the work continues for dealerships. We thought though in light of Shane in particular that really said you need to make a more detailed submission if you want a service award, that delaying such a submission here made sense because we still have work to do for these dealers, we are not exactly sure what that entails yet, and rather than let this large group of settlements pass without anything being paid to these dealers for incentive awards we thought we should set some money aside which, again, would be the same idea that it would be in a separate fund. If it doesn't get awarded by you in the future for whatever reason it will revert back into claim processing and claim payment but we, in our view as lead counsel for these dealerships, believe that an additional award may be justified. You made awards in round one, and we believe that in round two there may well be justification for making such an award, we are not sure how much it is, and we would need to document it properly for you in light of Shane, and we thought that having more time to do that made sense so the --

THE COURT: You want to set aside now to hold until this is resolved?

MR. RAITER: Correct.

THE COURT: And was that 8 or 9 million?

MR. RAITER: No, no, that was 1.5 percent, so it was about a million -- hold on. It was $1,875,000.

THE COURT: 1.875.

MR. RAITER: And if it turns out Your Honor awards something less than that or nothing then we would put that back into the pool, so we are not spending it, we just want to be sure that these settlements don't go by and there hasn't been some potential way for dealerships to come back and say we continue to do work, we continue to believe we are entitled to another award. It is a large group of settlements and we just wanted to be sure that was --

THE COURT: I think that's fair.

MR. RAITER: -- reserved.

THE COURT: I think that's fair. So you can set aside that and you can set aside the additional attorney fee.

MR. RAITER: Great.

THE COURT: I do have a question now on the plan of allocation.

MR. RAITER: Yes.

THE COURT: You are going to be submitting plans; is that correct?

MR. RAITER: We did with this motion.

THE COURT: This one has a plan, yes, but I thought you were indicating that you were submitting other plans of

allocation?

MR. RAITER: So what you have before you with this motion are plans for 18 parts, some of which are still parts related to the first group of settlements, some of those parts, of course, cross over into group two of settlements. So wire harness, we have wire harness settlements in group one and we have them in group two, so you have an updated wire harness plan of allocation in the materials we submitted.

There are some new parts that you have not seen a plan yet for that we submitted with this motion, but there are still some parts at issue in these settlements that we do not have enough information yet to submit plans of allocations for these parts in this group of settlements.

THE COURT: Okay. And they would be done by this same group?

MR. RAITER: Yes, by Mr. Rosenthal. And, again, what we need really to be -- what we think to be fair to people is to have as much information as we can about what particular makes and models, years, were specifically affected or specifically targeted as part of this process. So until we get cooperation that these defendants have agreed to provide on certain parts we don't believe we have enough information to submit a plan of allocation that makes sense yet for certain parts. So the plans that you have before you

would close out the parts in our first group of settlements, some of those plans apply to parts that are at issue in group two of settlements but we don't have the final plans for certain other parts in group two. We certainly want to work on that as quickly as we can in order to get those approved so that we would be ready to allocate or pay claims in group number two as quickly as possible.

THE COURT: Okay. So the plan here is approved. The Court read it, I certainly can't say mathematically I can approve it because I can't do that -- know that process and that -- I guess it is more like an algorithm that is being used, but certainly the Rosenthal Group has great expertise in this and along with the expertise of counsel, and in reading it the Court finds that it is a fair and reasonable plan, and I would anticipate that the ones that are coming in will follow the same protocol basically.

MR. RAITER: Thank you, Your Honor. I don't have anything further.

THE COURT: Does anybody have anything else on the settlements? Any of the defendants want to make any comment?

(No response.)

THE COURT: No. All right. Thank you very much. And, again, have a happy holiday.

THE LAW CLERK: All rise. Court is adjourned.

(Proceedings concluded at 2:42 p.m.)

CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of Case No. 12-md-2311, on Wednesday, November 16, 2016.

s/Robert L. Smith
Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 12/06/2016

Detroit, Michigan